

ESTTA Tracking number: **ESTTA486845**

Filing date: **08/02/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	94002525
Party	Applicant Boi Na Braza, Inc.
Correspondence Address	JUSTIN S COHEN THOMPSON & KNIGHT LLP 1722 ROUTH STREET, SUITE 1500 DALLAS, TX 75201-2532 UNITED STATES justin.cohen@tklaw.com, deborah.lively@tklaw.com
Submission	Other Motions/Papers
Filer's Name	Justin S. Cohen
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Signature	/Justin S. Cohen/
Date	08/02/2012
Attachments	Motion to Use Testimony.pdf ( 123 pages )(21422861 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BOI NA BRAZA, INC.,

Applicant,

vs.

TERRA SUL CORPORATION A/K/A  
Churrascaria Boi Na Brasa,

Excepted User.

Concurrent Use No. 94002525

Ser. No. 77/779,339

**Applicant's Motion to Use Testimony  
From Another Proceeding per 37 CFR § 2.122(f)**

Applicant Boi Na Braza, Inc. ("Boi Na Braza" or "Applicant") hereby requests The Trademark Trial and Appeal Board (the "Board") to allow the use of testimony from Cancellation No. 92047056 (the "Cancellation Proceeding") in the above-referenced concurrent use proceeding pursuant to 37 CFR § 2.122(f) and TBMP § 704.13.

**BACKGROUND**

1. On January 29, 2007, Excepted User Terra Sul Corporation a/k/a Churrascaria Boi Na Brasa (hereinafter, "Terra Sul" or "Excepted User") petitioned to cancel Applicant's geographically unrestricted Registration No. 2534608 for the mark BOI NA BRAZA for "restaurant services" in Class 42.

2. On June 12, 2009, the Board issued a decision to cancel Applicant's Registration No. 2534608.

3. On July 13, 2009, Applicant filed Application No. 77/779,339 to register the mark BOI NA BRAZA for “restaurant and bar services” for the entire United States except for the state of New Jersey (the “Application”).

4. On August 23, 2010, Excepted User filed a Notice of Opposition against concurrent use Application No. 77/779,339.

5. On December 13, 2011, the Board dismissed Opposition No. 91196845 without prejudice and instituted the present proceeding, Concurrent Use No. 94002525 (the “Concurrent Use Proceeding”).

6. On June 6, 2012, Applicant filed a Motion to Amend the Application to exclude both the state of New Jersey and the state of New York, instead of excluding only the state of New Jersey. However, because the Excepted User failed to respond to the motion, the Board has deferred a decision on the motion until it issues its final decision in this proceeding.

7. Applicant is confident that this amendment resolves the entire dispute between the Parties.

8. Discovery has closed in this proceeding and Applicant’s trial period began on July 20, 2012.

9. The Concurrent Use Proceeding is between the same parties as the previous Cancellation Proceeding.

10. The testimony Applicant seeks to introduce is contained is relevant and material to the issues in this Concurrent Use Proceeding, namely the issue of likelihood of confusion.

## ARGUMENT

A party may seek by motion to use testimony taken in another proceeding between the same parties in a pending *inter partes* proceeding before the Board as part of its evidence on the trial of the case, to the extent that the testimony is relevant and material. 37 CFR § 2.122(f); TBMP § 704.13. The Board has construed the term “testimony” as meaning only trial testimony, or a discovery deposition which was used, by agreement of the parties, as trial testimony in the other proceeding. *Id.* The motion should be accompanied by a copy of the testimony sought to be entered in the record together with clear arguments as to its relevance and materiality. TBMP § 528.05(f). Relevance and materiality frequently hinge upon the marks and goods or services involved in the two proceedings. *Id.*

The parties to the Cancellation Proceeding are the same as those in this Concurrent Use Proceeding, namely Terra Sul and Boi Na Braza (Exhibit A). During the Cancellation Proceeding, Boi Na Braza took the discovery deposition of Mr. Farid Saleh, and submitted it to the Board with a Notice of Reliance (Exhibit B). On August 7, 2008, Terra Sul took the testimony deposition of Mr. Saleh, and submitted it to the Board with a Notice of Filing on September 9, 2008 (Exhibit C).

Applicant seeks to introduce relevant excerpts from Mr. Saleh’s depositions as contained in Exhibits E and F. The selected testimony of Mr. Saleh in the Cancellation Proceeding is both material and relevant to this Concurrent Use Proceeding. Both proceedings involve the same parties and the same marks (BOI NA BRAZA and BOI NA BRASA). Further, both proceedings involve the issue of likelihood of confusion (*see* Exhibit D, the Board’s Order of December 13,



2011 at pages 4-6). Applicant's introduction of the testimony of Mr. Saleh from the Cancellation Proceeding into the record of this Concurrent Use Proceeding merely avoids the need to retake the same depositions to obtain the same information. *See, e.g., Focus 21 International Inc. v. Pola Kasei Kogyo Kabushiki Kaisha*, 22 USPQ2d 1316, 1317 (TTAB 1992).

The relevant and material portions of Mr. Saleh's testimony from the Cancellation Proceeding are attached. Exhibit E includes excerpts from Mr. Saleh's March 25, 2008 discovery deposition and Exhibit F includes excerpts from his August 7, 2008 testimony deposition.

### CONCLUSION

In view of the facts that the parties in the two proceedings are identical, the marks and services at issue are the same, and the proceedings share a common issue, Applicant's Motion should be granted, thus allowing Applicant to use the testimony from Exhibits E and F.

Dated: August 2, 2012

Respectfully submitted,

BOI NA BRAZA, INC.

By: /s/ Justin S. Cohen  
Herbert J. Hammond  
Deborah L. Lively  
Justin Cohen

Thompson & Knight LLP  
1722 Routh St., Suite 1500  
Dallas, Texas 75201

ATTORNEYS FOR APPLICANT  
BOI NA BRAZA, INC.

# **EXHIBIT A**

TTAB



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TERRA SUL CORPORATION a/k/a  
CHURRASCARIA BOI NA BRASA  
Petitioner

v.

BOI NA BRAZA, INC.  
Registrant

PETITION TO CANCEL

01-29-2007

U.S. Patent & TM Office Mail Rept Dt #72

COMMISSIONER FOR TRADEMARKS  
P.O. BOX 1451  
ALEXANDRIA, VA 22313-1451

SIR:

Petitioner, Terra Sul Corporation a/k/a Churrascaria Boi Na Brasa, a New Jersey corporation with a business address of 70 Adams Street, Store #4, Newark, New Jersey 07105, hereby petitions to cancel Registration No. 2,534,608, for the mark BOI NA BRAZA, registered January 29, 2002, and now owned by Registrant Boi Na Braza, Inc., according to the assignment records of the United States Patent & Trademark Office.

As grounds for cancellation, Petitioner asserts as follows:

1. For many years and since long prior to the filing date of Registrant's application and any date of first use on which Registrant can rely, Petitioner adopted and Petitioner and its related companies have continuously used, and not abandoned, the term BOI NA BRASA as a service mark for restaurant services.
2. Petitioner's mark BOI NA BRASA is properly translated from Portuguese to English as "Ox in embers."
3. Registration No. 2,534,608 was granted to Registrant Boi Na Braza, Inc. for the mark BOI NA BRAZA for restaurant services. The registration indicates that the mark is translated into English as "Ox in embers." That registration is now owned by Respondent Boi Na Braza, Inc.

4. Respondent's mark BOI NA BRAZA is not properly translated from Portuguese to English as "Ox in embers" because the word "Braza" exists, if at all, as a slang term for things Brazilian. Thus, Respondent's mark BOI NA BRAZA may possibly be translated as "Ox in Brazil" or perhaps "Brazilian Ox." In either case, the Brazilian connotations of the term Braza evidence a geographic commercial impression to the relevant consumer.

5. Respondent's mark BOI NA BRAZA so resembles Petitioner's previously used BOI NA BRASA as to be likely when used in connection with the services set forth in the registration, to cause confusion, mistake or deception within the meaning of Section 2(d) of the Trademark Act.

6. Respondent's mark BOI NA BRAZA, when properly translated from Portuguese to English and used in connection with the services set forth in the registration, is merely descriptive or deceptively misdescriptive of them within the meaning of Section 2(e) of the Trademark Act, primarily geographically descriptive of them within the meaning of Section 2(e) of the Trademark Act, and/or primarily geographically deceptively misdescriptive of them within the meaning of Section 2(e) of the Trademark Act.

The Commissioner is authorized to charge the Petition filing fee in the amount of \$300 and any other fees due to counsel's Deposit Account No. 20-0782/TSUL/002.

Wherefore, Petitioner prays that Registration No. 2,534,608 be cancelled in its entirety.

Respectfully submitted,

TERA SUL CORPORATION a/k/a  
CHURRASCARIA BOI NA BRASA

Date: 1/29/07

By EJ Wall  
Eamon J. Wall  
Attorney for Petitioner

PATTERSON & SHERIDAN, LLP  
595 Shrewsbury Avenue, Suite 100  
Shrewsbury, New Jersey 07702  
Telephone: 732-530-9404  
Facsimile: 732-530-9808

# **EXHIBIT B**

ESTTA Tracking number: **ESTTA248588**

Filing date: **11/12/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047056
Party	Defendant BOI NA BRAZA, INC.
Correspondence Address	REMY MCELROY DAVIS THOMPSON & KNIGHT L.L.P. 1700 PACIFIC AVENUE, SUITE 3300 DALLAS, TX 75201 UNITED STATES remy.davis@tklaw.com
Submission	Defendant's Notice of Reliance
Filer's Name	Remy M. Davis
Filer's e-mail	remy.davis@tklaw.com
Signature	/Remy M. Davis/
Date	11/12/2008
Attachments	Notice of Reliance.pdf ( 131 pages )(6858265 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

TERRA SUL CORPORATION A/K/A	§	
CHURRASCARIA BOI NA BRASA	§	
	§	
Opposer,	§	
	§	
v.	§	OPPOSITION NO. 92047056
	§	
BOI NA BRAZA, INC.,	§	
	§	
Applicant.	§	

**APPLICANT'S NOTICE OF RELIANCE UNDER  
TRADEMARK RULES OF PRACTICE 2.120(j) (1) & (3) and 2.122(e)**

Applicant, Boi Na Braza, Inc., hereby files this Notice of Reliance with the Trademark Trial and Appeal Board pursuant to Trademark Rules of Practice 2.120(j) (1) & (3) and 2.122(e), and the Trademark Trial and Appeal Board Manual of Procedure 704 et seq. and gives notice in accordance with the above rules of its intention to rely on the following material, copies of which are attached hereto and incorporated herein by reference:

**Discovery Deposition of Adverse Party**

30(b)(6) Deposition of Terra Sul Corporation a/k/a Churrascaria Boi Na Brasa, taken of Farid Saleh on March 25, 2008, and attached Exhibits 1-15.

**Official Record**

State of New Jersey Business Registration Certificate issued June 12, 2008, page 1 of 1. This record is relevant to showing ownership of Opposer's alleged BOI NA BRASA service mark.

Dated: November 12, 2008

Respectfully submitted,

THOMPSON & KNIGHT LLP

By: Remy M. Davis

Remy M. Davis

THOMPSON & KNIGHT LLP

1722 Routh Street

Suite 1500

Dallas, Texas 75201

(214) 969-1700

(214) 969-1751 (FAX)

ATTORNEY FOR APPLICANT



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **APPLICANT'S NOTICE OF RELIANCE**  
**UNDER TRADEMARK RULES OF PRACTICE 2.120(j) (1) & (3) and 2.122(e)** was served  
via First Class U.S. Mail to the following on November 12, 2008:

Mr. Eamon Wall  
Patterson & Sheridan, L.L.P.  
595 Shrewsbury Ave, Suite 100  
Shrewsbury, New Jersey 07702-1438

  
\_\_\_\_\_  
Remy M. Davis

# **EXHIBIT C**

ESTTA Tracking number:

**ESTTA235002**

Filing date:

**09/05/2008**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Proceeding	92047056
Party	Plaintiff TERRA SUL CORPORATION A/K/A CHURRASCARIA BOI NA BRASA
Correspondence Address	EAMON J. WALL PATTERSON & SHERIDAN, LLP 595 SHREWSBURY AVENUE, SUITE 100 SHREWSBURY, NJ 07702 UNITED STATES ewall@pattersonsheridan.com
Submission	Testimony For Plaintiff
Filer's Name	David L. Clark
Filer's e-mail	ewall@pattersonsheridan.com, dclark@pattersonsheridan.com, gslabbaert@pattersonsheridan.com, lcrater@pattersonsheridan.com
Signature	/David L. Clark/
Date	09/05/2008
Attachments	Deposition Testimony of Farid Saleh.pdf ( 42 pages )(2568108 bytes ) Witness Signature Page.pdf ( 1 page )(31856 bytes ) Farid Exhibit 1.pdf ( 2 pages )(79993 bytes ) Farid Exhibit 2.pdf ( 2 pages )(118309 bytes ) Farid Exhibit 3.pdf ( 4 pages )(84248 bytes ) Farid Exhibit 5.pdf ( 3 pages )(49755 bytes ) Farid Exhibit 6.pdf ( 13 pages )(376466 bytes ) Farid Exhibit 7.pdf ( 2 pages )(71391 bytes ) Farid Exhibit 8.pdf ( 27 pages )(1086567 bytes ) Farid Exhibit 9.pdf ( 41 pages )(1568987 bytes ) Farid Exhibit 10 - Confidential.pdf ( 1 page )(8958 bytes ) Farid Exhibit 11 - Confidential.pdf ( 1 page )(8912 bytes ) Farid Exhibit 12 - Confidential.pdf ( 1 page )(9186 bytes ) Farid Exhibit 13 - Confidential.pdf ( 1 page )(9498 bytes ) Farid Exhibit 14.pdf ( 3 pages )(96909 bytes ) Farid Exhibit 15.pdf ( 6 pages )(679055 bytes ) Farid Exhibit 16.pdf ( 2 pages )(61794 bytes ) Farid Exhibit 17.pdf ( 4 pages )(80050 bytes ) Farid Exhibit 18.pdf ( 2 pages )(52541 bytes ) Farid Exhibit 19.pdf ( 3 pages )(106108 bytes ) Farid Exhibit 20.pdf ( 2 pages )(55387 bytes ) Farid Exhibit 21.pdf ( 5 pages )(170220 bytes ) Farid Exhibit 22.pdf ( 8 pages )(185291 bytes )

September 5, 2008

Via U.S. mail

U.S. Patent and Trademark Office  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

75748967

Re: *Terra Sul Corporation a/k/a Churrascaria Boi Na Brasa v. Boi Na Brasa, Inc.*; In  
the United States Patent and Trademark Office before the Trademark Trial and  
Appeal Board; Cancellation No. 92047056  
Our Ref.: TSUL/0002

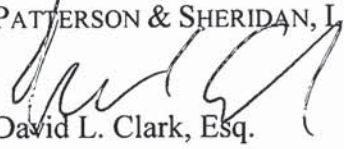
Dear Sirs:

Enclosed please find a certified copy of the transcript of the deposition of Farid Saleh in  
the above referenced Cancellation proceeding.

Should you have any questions or concerns, please contact Mr. Wall.

Very truly yours,

PATTERSON & SHERIDAN, LLP

  
David L. Clark, Esq.

DLC/gs  
Enclosures

834954\_1.DOC



09-09-2008

U.S. Patent & TM Office Mail Rept Dt #73

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7103 Lentz Court  
Summerfield, NC 27358-9127  
TEL 336.643.3065  
FAX 336.643.8994

# **EXHIBIT D**

UNITED STATES PATENT & TRADEMARK OFFICE  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: December 13, 2011

Opposition No. 91196845

Terra Sul Corporation a/k/a  
Churrascaria Boi Na Brasa

v.

Boi Na Brasa Inc.

Concurrent Use No. 94002525

Boi Na Brasa Inc.

v.

Terra Sul Corporation a/k/a  
Churrascaria Boi Na Brasa

Before Quinn, Kuhlke, and Wellington,  
Administrative Trademark Judges.

By the Board:

In the above-captioned opposition, on December 5, 2011, concurrent use applicant Boi Na Brasa, Inc. ("Boi") filed a motion to compel discovery based on opposer/excepted user Terra Sul Corporation a/k/a Churrascaria Boi Na Brasa's ("Terra Sul") statement in a November 29, 2011 letter from its attorney to Boi's attorney that it would not respond to Boi's discovery requests.

In the interest of resolving this motion without undue delay, the Board determined that a telephone conference was warranted. See Trademark Rule 2.120(i)(1); TBMP Section

502.06(a) (3d ed. 2011). On December 8, 2011, such conference was held between Terra Sul's attorney Eamon J. Wall, Boi's attorney Justin S. Cohen, and Board attorney Andrew P. Baxley.

Pursuant to the schedule adopted by way of the Board's October 25, 2011 order, proceedings herein resumed on November 14, 2011 with the discovery period closing on November 15, 2011. Boi served its initial disclosures on November 14, 2011, nearly six months late, and served its first set of discovery on November 15, 2011.

On November 29, 2011, Terra Sul's attorney sent a letter to Boi's attorney in which he noted that Boi served its initial disclosures on November 14, 2011 and served its first set of discovery requests on the next day. Based thereon, Terra Sul's attorney advised Boi that it would not respond to Boi's discovery requests. Terra Sul's attorney, noting that Terra Sul timely served initial disclosures on May 16, 2011, stated that it did not need to take discovery because it intends to file a notice of reliance upon the documentary evidence filed in Cancellation No. 92047056 between the parties, and suggested that Boi do the same.

During the conference, Terra Sul's attorney expressed concern about the scope and volume of Boi's discovery requests and indicated that Terra Sul seeks to contain costs herein.

In reply, Boi's attorney indicated during the conference that the parties disagree about whether Terra Sul's concurrent excepted use territory should include the State of New York. Therefore, Boi seeks discovery regarding Terra Sul's nexus to the State of New York.

Trademark Rule 2.120(a)(3) states that "[a] party must make its initial disclosures prior to seeking discovery." There is no dispute that Boi made its initial disclosures one day prior to serving its discovery requests. Bearing in mind that "[e]ach party involved in an inter partes proceeding is obligated to make [timely] initial disclosures," the Board shares Terra Sul's frustration with Boi's six months late service of initial disclosures. TBMP Section 401.02 (3d ed. 2011). However, Boi is not precluded from taking discovery under the circumstances herein. Rather, Terra Sul's remedy would have been to file a motion to compel Boi's initial disclosures after such disclosures were past due. See *Influence, Inc. v. Elaina Zuker*, 88 USPQ2d 1859, 1860 n.3 (TTAB 2008). Instead of refusing to respond to any of Boi's discovery requests, Terra Sul should serve responses to those discovery requests, providing



information that it believes to be proper and stating objections to those requests that it believes are improper. Cf. TBMP Section 526 (3d ed. 2011) (it is generally

inappropriate to respond to discovery by filing a motion attacking the discovery at issue).

In view thereof, Boi's motion to compel is granted. Terra Sul is allowed until thirty days from the mailing date set forth in this order to serve responses to Boi's discovery requests.<sup>1</sup>

Further, Terra Sul's intent to make the documentary evidence of Cancellation No. 92047056 of record by way of a notice of reliance, Trademark Rule 2.122(f) states as follows:

By order of the ... Board, on motion, testimony taken in another [Board inter partes] proceeding ... between the same parties or those in privity may be used in a proceeding, so far as relevant and material, subject, however, to the right of any adverse party to recall or demand the recall for examination or cross-examination of any witness whose prior testimony has been offered and to rebut the testimony.

The Board has construed the term "testimony," as used in Trademark Rule 2.122(f), as meaning only trial testimony, or a discovery deposition which was used, by agreement of the

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<sup>1</sup> Because Boi filed the motion to compel prior to the due date for responses to its first set of discovery requests, Terra Sul may object on the merits to Boi's discovery requests.

parties, as trial testimony in the other proceeding. See TBMP Section 704.13 (3d ed. 2011).

In reviewing the record herein, we note that the parties had been involved in Cancellation No. 92047056, wherein Terra Sul sought cancellation of Boi's geographically unrestricted Registration No. 2534608 for the mark BOI NA BRAZA in typed form for "restaurant services" in International Class 42. In a June 12, 2009 final decision in that proceeding, the Board granted Terra Sul's claim under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), finding that there was likelihood of confusion between Boi's BOI NA BRAZA mark and Terra Sul's previously used mark BOI NA BRASA for restaurant services. In that decision, the Board also dismissed Terra Sul's "claim of descriptiveness under [Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1)]" and deemed waived any claims under Trademark Act Sections 2(e)(2) and (3), 15 U.S.C. Sections 1052(e)(2) and (3).

In the above-captioned opposition proceeding, Terra Sul opposes registration of Boi's concurrent use application Serial No. 77779339 to register the mark BOI NA BRAZA in standard character form for "restaurant and bar services" in International Class 43<sup>2</sup> on the ground of likelihood of

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<sup>2</sup> Boi filed its concurrent use application on July 13, 2009 and therein alleges July 19, 1999 as the date of first use anywhere

confusion with its previously used mark BOI NA BRASA for restaurant and bar services under Section 2(d) and also alleges grounds that the mark, when properly translated from Portuguese to English and used in connection with the identified services, is merely descriptive or deceptively misdescriptive, primarily geographically descriptive and/or primarily geographically deceptively misdescriptive under Trademark Act Section 2(e).

The doctrine of merger and bar, also known as claim preclusion or *res judicata*, "generally binds parties from litigating or relitigating any [claim] that was or could have been litigated in a prior adjudication and prevents claim splitting." *Futura Dev. Corp. v. Centex Corp.*, 761 F.2d 33, 42 (1st Cir. 1985). Application of the doctrine of merger and bar is appropriate when (1) there is an identity of parties or their privies; (2) there was an earlier final judgment on the merits of a claim; and (3) the second claim is based on the same set of transactional facts as the

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and September 11, 2000 as the date of first use in commerce. The application includes a statement that "[t]he English translation of the mark is 'steer over embers.'" In that application, Boi named Terra Sul as an excepted concurrent user and stated that it seeks "registration of the mark in connection with 'restaurant and bar services' for the entire United States, except for the State of New Jersey." Boi also notes that Terra Sul has filed applications Serial Nos. 77813335 and 77813416. USPTO records indicate that, in those applications, both of which were filed on August 26, 2009, Terra Sul seeks geographically unrestricted registrations and that those applications are suspended in *ex parte* examination pending disposition of Boi's involved application.

first. See *Jet, Inc. v. Sewage Aeration Systems*, 223 F.3d 1360, 1362 (Fed. Cir. 2000).

In applying the doctrine of merger and bar herein, the parties in Cancellation No. 92047056 and the above-captioned opposition are identical, and there was a final judgment on the merits in Cancellation No. 92047056, and the Section 2(e) grounds in the respective proceedings are based on the same transactional facts in that the Section 2(e) grounds in both cases are based on the meaning of Boi's mark, when properly translated from Portuguese to English and used in connection with the identified services. Accordingly, the Section 2(e) grounds set forth in the notice of opposition are *sua sponte* dismissed.

Regarding Terra Sul's remaining claim under Trademark Act Section 2(d), we note that, in Cancellation No. 92047056, we found that Terra Sul had priority and that there was a likelihood of confusion between the parties' marks. Further, Boi, by identifying Terra Sul as an exception to its exclusive right to use, has effectively admitted that it is not entitled to a territorially unrestricted registration. Accordingly, the sole remaining issue herein is whether or not Boi is entitled to the concurrent use registration it seeks.

Where, as here, an applicant seeks a geographically restricted registration in which it names an opposer to that registration as a named excepted user to its exclusive right

to use the mark in commerce, the appropriate forum for an adjudication of the respective rights of the parties is a concurrent use proceeding; therein, the named excepted user may attempt to establish that applicant is not entitled to the concurrent use registration sought.<sup>3</sup> See Trademark Rule 2.99(h); *Inland Oil & Transport Co. v. IOT Corp.*, 197 USPQ 562 (TTAB 1977); TBMP Section 1113.01. Accordingly, the above-captioned opposition is hereby dismissed without prejudice, and the above-captioned concurrent use proceeding is hereby instituted with Boi, the concurrent use applicant, in the position of plaintiff and Terra Sul, the named excepted common law user, in the position of defendant.

Boi is allowed until ten days from the mailing date set forth in this order to serve upon Terra Sul copies of its application, specimens and drawing. See Trademark Rule 2.99(d)(1). Terra Sul is allowed until forty days from the mailing date set forth in this order to file an answer.<sup>4</sup>

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<sup>3</sup> Had opposer not filed the notice of opposition, the Board would have already instituted a concurrent use proceeding with Boi as the concurrent use applicant/plaintiff and Terra Sul as the named excepted common law user. See Trademark Rule 2.99(c). The parties were informed during the telephone conference that conversion of the opposition to a concurrent use proceeding may be appropriate. Neither party objected to such conversion.

<sup>4</sup> Terra Sul has two geographically unrestricted applications that are suspended in *ex parte* examination. Those applications were filed after Boi's involved application and have not been brought into this proceeding. See TBMP Section 1104 (3d ed. 2011). Thus, Terra Sul is an excepted common law user in the above-captioned concurrent use proceeding and must file an answer to avoid entry of default judgment therein. Entry of default judgment in the concurrent use proceeding would result in Terra Sul's preclusion from claiming any right more extensive than that

See Trademark Rule 2.99(d)(2); TBMP Section 1107 (3d ed. 2011). In view of the circumstances herein, the Board finds that a brief reopening of the discovery period for the limited purpose of allowing the parties time in which to take discovery regarding issues unique to the newly instituted concurrent use proceeding.

The Board attorney indicated during the aforementioned telephone conference that the parties may want to resolve this case by accelerated case resolution (ACR). ACR will likely save the parties and the Board time and expense and will likely reduce potential procedural problems. See generally TBMP Section 700 (3d ed. 2011). In an ACR proceeding, parties typically agree to proceed directly to final briefing on the merits and foregoing testimony periods. The parties would submit their evidence as exhibits to their ACR briefs with testimony offered and evidence introduced through declarations or affidavits and materials that would, in a typical trial, be made of record by notice of reliance submitted as exhibits to their ACR briefs without notices of reliance.

In an ACR proceeding, the evidence submitted in connection with the briefs would be treated as the final record for the case. See, e.g., *Freeman v. National*

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acknowledged in Boi's involved concurrent use application, i.e., any right more extensive than the State of New Jersey. See TBMP Section 1107 (3d ed. 2011). In the answer, Terra Sul should set

Opposition No. 91196845, Concurrent Use No. 94002525

*Association of Realtors*, 64 USPQ2d 1700 (TTAB 2002); *Miller Brewing Co. v. Coy Int'l Corp.*, 230 USPQ 675 (TTAB 1986).

The Board would decide issues of material dispute and issue a final decision in an expedited manner after considering the parties' ACR briefs in accordance with the evidentiary burden at trial, that is, by preponderance of the evidence. Cf. *Gasser Chair Co., Inc. v. Infanti Chair Mfg Corp.*, 60 F.3d 770, 34 USPQ2d 1822, 1824 (Fed. Cir. 1995) (in addition to proving elements of claim by preponderance of the evidence, a party moving for summary judgment must also establish that there is no genuine issue of material fact as to those elements). The final decision would be judicially reviewable as set forth in Trademark Rule 2.145.

The parties should review Board ACR materials at <http://www.uspto.gov/trademarks/process/appeal/index.jsp> and discuss among themselves whether they want to pursue ACR herein. The parties should notify the Board that they want to pursue ACR by not later than the deadline for Boi's pretrial disclosures.

Dates herein are reset as follows.

Expert Disclosures Due	1/16/12
Discovery Closes	2/15/12
Boi's Pretrial Disclosures Due	3/31/12
Boi's 30-day Trial Period Ends	5/15/12
Terra Sul's Pretrial Disclosures Due	5/30/12
Terra Sul's 30-day Trial Period Ends	7/14/12

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forth its position with regard to the concurrent use registration that Boi seeks. See *id.*

Boi's Rebuttal Disclosures Due	7/29/12
Boi's 15-day Rebuttal Period Ends	8/28/12

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.



# **EXHIBIT E**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration

No. 2,534,608

Registered on January 29, 2002

\*\*\*\*\*

TERRA SUL CORORATION a/k/a

CHURRASCARIA BOI NA BRASA,

Petitioner,

vs.

CANCELLATION NO.92047056

BOI NA BRAZA, INC.,

Respondent.

\*\*\*\*\*

Transcript of the deposition of FARID  
SALEH, taken in the law offices of Simoes &  
Montiero, 83 Polk Street, Newark, New Jersey, on  
March 25, 2008 commencing at about nine o'clock in  
the forenoon.

CLASS ACT REPORTING AGENCY

133-H Gaither Drive

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1

2 A P P E A R A N C E S:

3 THOMPSON & KNIGHT, LLP

4 By: IRENE R. DUBOWY, ESQ.

5 919 Third Avenue

6 New York, New York 10128

7 On behalf of Respondent

8

9 PATTERSON & SHERIDAN, LLP

10 By: EAMON J. WALL, ESQ.

11 595 Shrewsbury Avenue

12 Shrewsbury, New Jersey 07702

13 On behalf of Petitioner

14

15

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25

1 the bartender to the time you had the truck driver's  
2 job?

3 A At the restaurant it was from 1990 to 1994,  
4 approximately, not exactly.

5 And as a truck driver from 1994 to 1995.

6 Q And after 1995 what did you do?

7 A Toward the end of 1995 we started to do things  
8 toward the restaurant.

9 Q When did you open your restaurant?

10 A 1996 on a halleluiah Saturday -- on a Saturday  
11 on a holiday, before Easter.

12 Q And is this restaurant that you opened  
13 just before Easter 1996 the restaurant that is now  
14 at 70 Adams Street?

15 A Store number 4.

16 Q Was that restaurant moved from there to  
17 anywhere else during that time from 1996 to now?

18 A No, I just rent another space next door, store  
19 number 3.

20 Q Can you tell us exactly what kind of  
21 restaurant you operate at 70 Adams Street?

22 A What type?

23 Q Yes.

24 A Brazilian food restaurant, there is the  
25 barbecue which is our main business. That's all.

1           Because they are not self-explanatory I  
2 will ask you to explain to me what some of those  
3 documents are.

4           MR. WALL: Are you going to identify them  
5 by the Bates numbers?

6           Q     When I am talking to you I will use TS and  
7 I will reference the Bates number.

8           These numbers are not in order so we may  
9 have to shuffle through them?

10          A     Why are you using the TS?

11          Q     In litigation when your counsel produces  
12 documents to us the way that you keep track of what  
13 documents were exchanged and what documents were  
14 noticed is by this reference number, and this is the  
15 reference number that your attorney created. The TS  
16 is just for organizational purposes.

17                So I'm going to ask you about TS-311, it  
18 has a July22, 1999 date.

19                It says it was for one hundred and eight  
20 50/50 white t'shirts with one color front, one color  
21 back, and for one three-by-five banner.

22                Do you remember that?

23          A     Yes.

24          Q     Why were those t'shirts ordered?

25          A     To give out.



1 Q To give out to customers of the  
2 restaurant?

3 A Yes, to people, you know, I order t'shirts to  
4 give to people in the summer.

5 Q To people who come to your restaurant?

6 A Yes.

7 Q What is the banner for?

8 A When we have street parties or festivals we  
9 always order banners just to advertise the  
10 restaurant.

11 Q And the street parties are in the summer-  
12 time here, where are the street street parties?

13 A Before there used to be two street parties,  
14 there was Brazilian and Portuguese days, but not  
15 now, since last year things have changed because of  
16 the budgets, so the Portugal street party doesn't  
17 exist anymore.

18 And then I just make a party in my parking  
19 lot right here.

20 Q Who is cutting the budget for the parties?

21 A The City is cutting the budgets for law  
22 enforcement and for City cleaning as well.

23 Q Newark?

24 A Yes.

25 Q Then we have TS-312, and that says magnet

1 house calendar with red imprint and a three by six  
2 banner with logo.

3 That's from December 27, 1999.

4 This banner was for one of those parties  
5 you were talking about, or was this for something  
6 else?

7 A These are also from 1999 so I don't remember  
8 exactly.

9 I see here that the magnets are those  
10 magnets that you put on your refrigerator, and the  
11 calendars, New Year's calendars, are for the year to  
12 come, and also the banner is used for a New Year's  
13 party that I hold at my restaurant, which it is a  
14 tradition for Boi na Brasa to have these parties.

15 Q Where do you place the banners?

16 A Nowadays we place them in various strategic  
17 points in the City.

18 When we started to hold this party, it was  
19 actually a small party, it was actually a party  
20 among friends, but the last one that we had,  
21 actually had thirteen hundred people at the Robert  
22 Treat Hotel.

23 Q Where is that?

24 A In Newark.

25 Q And the magnet house calendars, do you

1 give them to your clients when they leave for the  
2 New Year?

3 A No, this I give out at the restaurant when they  
4 pay. If they don't pay they don't get it.

5 Q TS-623, the sweat shirts with the logo  
6 front and back, they are also just sweat shirts that  
7 you give out?

8 A Yes, we give these at the restaurant and also  
9 in the streets to advertise, I like to use the sweat  
10 shirts because that's a shirt you wear ten times, it  
11 is much cheaper than an advertisement page in a  
12 newspaper.

13 Q When you say you give out in the streets,  
14 is that the street in front of your restaurant,  
15 where exactly is this distribution?

16 A We know a lot of people here in Newark and I  
17 know a lot of people who work in civil construction,  
18 so I see see this customer and I see he has five or  
19 six people working for him and I give it to him and  
20 he will just give them out to the others.

21 Q Now we are going to talk about TS-681, it  
22 is an invoice from from the Brazilian Voice  
23 Newspaper, and 683 is also the Brazilian Voice and  
24 so is 680, 682, 679.

25 All invoices are from the Brazilian Voice



1 Newspaper.

2 Do you remember placing, did you  
3 customarily place adds in the Brazilian Voice  
4 Newspaper?

5 A I used to.

6 Q Why not anymore?

7 A For personal reasons.

8 The Press is better, I think their  
9 newspaper is better, because in this town we have  
10 two Brazilian newspapers, Brazilian Voice and  
11 Brazilian Press.

12 I advertise in Brazilian Press because I  
13 see that I get more business and I like Brazilian  
14 Press.

15 Q Are there any other newspapers that you  
16 advertise in in Newark?

17 A Not on a regular basis, whenever the  
18 opportunity arises we also use Luso Americano.

19 Q That's a community based newspaper as  
20 well, right, is it geared toward the Portuguese, I  
21 assume?

22 A It is written in Portuguese and then the same  
23 thing is written in English, and it goes wherever  
24 there is a Portuguese community in the country.

25 Q Where is that, do you know, besides

1 Newark?

2 A Wherever there is a Portuguese community  
3 throughout the United States,.

4 Q And when did you first start to advertise  
5 in this newspaper, Luso Americano?

6 A I don't remember.

7 Q Have you checked your records to get the  
8 invoices for that newspaper? Because I don't see  
9 those invoices here.

10 A You know, there are a lot of papers, I have  
11 papers here for maybe five years, but a lot of  
12 things that are old I didn't file anymore.

13 Q When was the last time you advertised in  
14 Luso Americano?

15 A Last year I think.

16 Q So you must have records for that?

17 A One can call the newspaper and got the  
18 information.

19 Q I think we are entitled to get those  
20 records from you.

21 MR. WALL: We will get it.

22 Q And so you don't remember when you started  
23 to advertise in Luso Americano?

24 A It's not like it is advertised monthly or  
25 weekly, it is just once in a while, I have a person

1 who actually works there who I know, his name is  
2 Orlando Norberto, and he advertises for me there and  
3 sometimes he doesn't even charge me.

4 Sometimes he comes up to me and says,  
5 well, you know, "Would you like to have maybe an  
6 article in the newspaper, " or, "would you like to  
7 advertise?"

8 Q Does Orlando Norberto operate here in  
9 Newark?

10 A In Elizabeth.

11 Q New Jersey?

12 A Yes.

13 Q That's like the town next to Newark,  
14 right?

15 A Yes.

16 Q Brazilian Voice Newspaper, do you remember  
17 when you started to advertise with them?

18 A No.

19 Q I think the first one I have here is from  
20 2000, I don't have anything up to 2000 and I don't  
21 have anything after --

22 A There were papers that were submitted to you  
23 that showed we were already operating before they  
24 opened.

25 Q Anything you have of advertisements



1 between 1996 until now is relevant so you should  
2 make sure to give it to your counsel.

3 A Okay.

4 Q So Brazilian Voice is also in Newark, the  
5 community, the Brazilian community; do you know the  
6 distribution for this newspaper?

7 A I don't know.

8 Q And what is Tiolindo News, is that Luso  
9 Americano, is that a name for it?

10 Q Tiolindo has created a Website. It used  
11 to be very popular at that time so we decided to do  
12 a page on that Website.

13 Q Was it popular here in Newark, in the  
14 community?

15 A Yes, it was.

16 Q Why is that?

17 A Because in those days Brazil wasn't very  
18 popular here, it was not very common to find it  
19 on TB and stuff like that, radio stations.

20 So in order for us to watch the soccer  
21 games or whatever we would do everything through  
22 this.

23 Q So is it some Brazilian guy that made  
24 available those games and everything in Brazilian  
25 for the community here?

1 A It wasn't like live soccer games or anything  
2 like that, they were recorded, they were videotaped,  
3 but the radio used to get live games from Brazil.

4 Q So Tiolindo also had a radio station?

5 A No.

6 Q You just could hear the audio, like the  
7 audio from the Internet?

8 A We would enter the site, tiolindo.com, and then  
9 you can see right away with banners and stuff like  
10 that you could some Brazilian news from the  
11 Brazilian newspapers and things like that.

12 Q And does this site still exist?

13 A I don't think it does.

14 Q And the first one you have in the record  
15 is from 2000?

16 A Yes. That's when we joined them, in 2000, I  
17 don't even know the date.

18 Q Fair enough.

19 Then we have TS-713, Listas Telefonicas  
20 Brazil, USA.

21 It has a statement date of June 29, 2001  
22 and it says: Listas Telefonicas Brasil USA, 123 Van  
23 Buren Street, Third Floor, Newark, New Jersey,"  
24 right?

25 A Yes.

1 Q Do you know the person who runs this  
2 business?

3 A Yes.

4 Q Is he a friend?

5 A My friend.

6 Q And when did you start advertising with  
7 him?

8 A Well, the person who created this, the person  
9 owns a newspaper nowadays called Brazilian Press.  
10 And they offered me this Listas and I was  
11 part of it.

12 And I think it lasted only one or two  
13 years because I think they had a partnership with  
14 other individuals and it didn't work out.

15 Q So it started around 2001, correct?

16 A I can't tell you how long it lasted, all I know  
17 is that it was created on that date.

18 Q You started advertising around that date,  
19 right?

20 A I started to advertise in 1996.

21 Q I understand that, but my question is  
22 whether you started to advertise with this company  
23 in 2001?

24 A Yes.

25 Q You don't know for sure but you think



1 Listas Telefonicas only lasted two years?

2 A With this, yes, but there is another directory  
3 called Guya Veige Amarelo.

4 Q Is that what TS-758 is?

5 A Yes.

6 Q What is the date?

7 A 2002.

8 Q So you started advertising with Verde  
9 Amarelo in 2002?

10 A Yes.

11 Q Is there anything between 1996 and 1999,  
12 July 1, 1999, between 1996 when you first started  
13 Churrascaria Boi na Brasa, and July 1, 1999?

14 A When we started in 1996 we didn't have much  
15 money, it's not like we have a lot today, but we  
16 started to advertise in a cheaper way, which is word  
17 of mouth, talking about it.

18 And then in 1997 we started advertising in  
19 the newspapers and then we started to do the  
20 t-shirts and also the match-boxes, which people  
21 don't use that much now, but we have some of them,  
22 and the magnets and caps.

23 Q So the newspapers was in 1977, right?

24 A Yes.

25 Q What were the newspapers?

1 A The Brazilian Press.

2 Q And that's TS-717

3 A Yes.

4 Q And you started that in 1997?

5 A Yes, when the newspaper was created.

6 Q The newspaper was created in 1997 as well?

7 A Yes.

8 Q And this is also the owner of

9 (inaudible)?

10 A That directory no longer exists, now they have  
11 advertising in a newspaper that has a new directory  
12 and they have already invited me to join.

13 Q When the newspaper started do you remember  
14 what was the circulation of the newspaper?

15 A I don't remember.

16 Q But you think it was just for the  
17 community here, right?

18 A Possibly.

19 Q In 1996, flyers and word of mouth, the  
20 flyers you distributed with handouts in the street?

21 A No.

22 Q Where did you distribute them?

23 A Where we are located now at 70 Adams, that used  
24 to be known as the Brazilian Shopping Mall, there  
25 was a hair salon, a jewelry store, and also a store



1 called Coisa Nossa, which is still there to this  
2 day.

3 And in those days they used to sell  
4 newspapers, they used to send newspapers outside of  
5 the state because in those days only Newark was  
6 issuing newspapers.

7 Q The newspapers are like the Brazilian  
8 newspapers that you can buy, like the traditional  
9 Brazilian newspapers, you were actually able to  
10 obtain them in this Brazilian Mall?

11 A Yes.

12 Q So you didn't advertise in the Global  
13 Journal de Brazil or anything like that?

14 A No, you made some sort of mistake.

15 Q I did not want to make a mistake but I  
16 want to make it clear for the record that the  
17 newspapers you are talking about are not the same as  
18 the Brazilian Press?

19 A No, no, no, I'm going to explain to you so you  
20 can explain to her.

21 Let's say newspapers from Brazil, Estago de  
22 San Paulo, I would place my flyers inside these  
23 newspapers, and those newspapers were distributed to  
24 families, people who would read them once a week and  
25 they can see my name there, Boi na Brasa.

1 Q Did you get authorization from the  
2 newspapers in Brazil in order to make them as your  
3 vehicle?

4 A No, because the person would bring it to Fed-Ex  
5 or whatever would put an envelope, a separate  
6 envelope inside, it would go with it inside.

7 Q So it wouldn't be inside of the newspaper,  
8 it would be together?

9 A No, no, no.

10 Q The distribution of the newspapers was  
11 done through Fed-Ex, or U.S. Mail?

12 A I don't know how they would deliver it.

13 Q Because that would have been really  
14 costly if you were Fed-Ex-ing the newspaper to  
15 somebody's house, correct?

16 A I pay eighty dollars to get Chimarrao from  
17 Brazil and I don't complain, I pay the price.

18 In those days there was no Internet,  
19 things weren't the same.

20 Q Who ran this newspaper business?

21 A The person has left for Brazil.

22 Q Was this like a daily, or Sunday,  
23 newspaper?

24 A I can't, you know, it's not going to help you  
25 asking me questions this way because it wasn't

1 regular, it is not the way it worked.

2 It was once in a while, it wasn't weekly  
3 or biweekly or anything like that, once a month  
4 sometimes.

5 The advertisement was usually mostly here.

6 Q The Brazilian Press, you said when they  
7 first started in 1997 you were probably one of the  
8 first customers, right?

9 A Yes.

10 Q And you don't know exactly when they first  
11 started, you don't know exactly what the circulation  
12 was?

13 A I don't remember. It's easy to get, you just  
14 ask initially what was the circumlation.

15 Q Did you buy this newspaper, or did you get  
16 it for free?

17 A For free.

18 Q It's for free?

19 A It's for free.

20 Q So the newspaper's business is based on  
21 the advertisements, the local advertisements, right?

22 A Yes.

23 MR. WALL: I don't know if he is an  
24 expert on their business models.

25 MS. DUBOWY: I think it's a fair question,



1 he is a personal friend of the owner. He started  
2 advertising in the newspaper at the same time that  
3 his friend created the newspaper.

4 He may have some knowledge and I would  
5 like to inquire about that.

6 MR. WALL: But you are asking him to say  
7 what did the owner of the paper tell him the  
8 circulation was of the paper.

9 MS. DUBOWY: I wasn't asking about the  
10 circulation, I was asking about the kind of  
11 advertisements and whether the types of advertising  
12 were mostly from the region.

13 MR. WALL: Having read the paper, having  
14 looked at the ads in the paper, did he notice if the  
15 ads were local or non-local?

16 Q As to the Brazilian Press, by reading  
17 them do you recognize that most of the advertisement  
18 is done by the Brazilian businesses here in Newark?

19 A Mostly, yes.

20 Q Can you think of any that were not that  
21 you just remember from your recollection?

22 A I don't remember. All I know is that they had  
23 the same newspaper also in Florida.

24 Q But it is not the same manager, right?  
25 Have you placed an advertisement in the

1 Florida newspaper?

2 A No, the newspaper owner told me that the  
3 newspaper was going out to Florida and that there  
4 are people working there already.

5 Q When the newspaper goes to Florida, do you  
6 know when you buy an ad here in Newark for the  
7 newspaper here is that ad published in Florida, or  
8 the Florida community has their own ads?

9 A Possibly it's the same ad in Florida as well.

10 Q And you think that it's being, this free  
11 newspaper that is supported by advertisements only  
12 from mostly, as you say, Newark businesses which is  
13 being shipped to Florida just to be like advertising  
14 Newark businesses in Florida; can you explain that?

15 A This is a question you have to ask of the  
16 owner.

17 Q And Guya Veige Amarelo is something --  
18 this is not by the Brazilian Press, right?

19 A No.

20 Q That started in 2002?

21 A No, it started before.

22 (Pause.)

23 A In 2002, yes.

24 Q Do you still advertise with them, or no?

25 A Up until last year, yes.

1 Q But this year you haven't?

2 A No, not this year.

3 Q We are only in March, you may still do it?

4 A Something happened, actually what happens is  
5 that when I announced in the street festivals here,  
6 I offered an exchange with her and she accepted it,  
7 so I printed out her banner and I put her banner on  
8 the street festival, and when I called her to settle  
9 things she never called me back, so I said, "Well, I  
10 did it for her but she never did it for me," I am  
11 not going to do it for her anymore.

12 Q So you don't advertise with her anymore?

13 A I'm not going to say that, I'll just say I  
14 stopped for a while.

15 Q Then we have TC-440, those key-rings?

16 A Yes.

17 Q And do you sell them, or do you distribute  
18 them?

19 A No, it is free.

20 Q Where do you give them out for free?

21 A Clients.

22 Q To customers who come here?

23 A Yes.

24 Q And then we have the ski hats embroidered  
25 only, that's TS-170?



1 A Yes.

2 Q And those are also distributed for the  
3 customers who come here?

4 A Yes.

5 I can give you one if you want.

6 Q They you have TS-1018, sign coroplast  
7 three by four with Boi na Brasa and Casa Nova logo  
8 (parking) with installation; what is that?

9 A I'll explain it to you.

10 At the Adams Street parking lot there is a  
11 person who helps out with the parking of the cars,  
12 so I made -- I built a little cabin for him so that  
13 he is not cold during the winter and I placed our  
14 banner outside together with Casa Nova's together,  
15 and I placed the Boi na Brasa sign, I pasted it to  
16 the little cubicle, cabin, it is still there.

17 Q So this parking lot is for the people who  
18 go shop on Adams Street, right?

19 A Yes.

20 Q Is that like a city parking lot, or is  
21 that like a private parking lot?

22 A Private.

23 Q And then we have TS-171, February 24, 2003  
24 1,000 magnet calendars.

25 And that's the case because you can see

1 that's after the end of the year, is that the ones  
2 that you distribute in the New Years' party?

3 A Sometimes it is later, you know, it might be  
4 off a little bit.

5 Q They might have delivered it but issued  
6 this later?

7 A No, I am talking about the magnets, the dates  
8 when the magnets were made.

9 I was trying to make them at the beginning  
10 of the year.

11 Q For the distribution to the customers that  
12 you have, right?

13 A Yes.

14 Q Then you have some more, you have  
15 twenty-one aprons with one color Boi na Brasa logo,  
16 was this also to distribute to your friends?

17 A That's more inside the restaurant when we have  
18 a party in the house, in the restaurant, so that  
19 everybody looks the same, they all wear it.

20 Q For the parties in the restaurant?

21 A For everything.

22 Q Can you explain?

23 A If a person is actually making the barbecue he  
24 will wear the apron.

25 Q So it is not really-- it is advertisement



1 in the sense that your employee has the logo but it  
2 is really like a uniform?

3 A Yes.

4 Q Then we have one banner four by six with  
5 sponsors, two coroplast boxes (Confianca Moving),  
6 one banner four by twelve (Boi na Brasa), sixty  
7 t'shirts with one color on back and one color on  
8 front (Boi na Brasa), sixty same as above (Casa  
9 Nova), one set-up charge?

10 A Yes.

11 Q Please explain what that is for?

12 A This is a festival that's, as I told you  
13 before, Portugal Day which happens in June and those  
14 coroplast boxes for moving.

15 Q Why do they call it coroplast boxes?

16 A Confianza (phonetic) ships boxes to Brazil, so  
17 we created, designed a box with the logo and also I  
18 placed some lighting inside so that it can light up  
19 at night, which is a way of advertising.

20 Q And you paid for the advertising?

21 A Because they paid me for the space.

22 Q For your shipping something to Brazil?

23 A No, I advertised for them because they send me  
24 a lot of customers, stuff like that.

25 Q So coroplast boxes, I still don't

1 understand; is it like a big box?

2 A Do you know anything about these boxes, when  
3 you want to ship things regularly to Brazil, they  
4 charge an average of \$100 per box to ship to Brazil,  
5 used clothing and stuff like that.

6 So they wanted to advertise this box so I  
7 designed the box.

8 Q So this is not a Boi na Brasa  
9 advertisement then, coroplast is advertisement of  
10 Confianza?

11 A Yes, for Confianza.

12 MR. WALL: Your name is not on the box?

13 THE WITNESS: My name is not on the box.

14 I am relaxed here because I am telling the  
15 truth. That's what it is.

16 Q That's all we need.

17 And then we have TS-1033.

18 Can you understand the handwriting there?

19 A Place mats.

20 Q And 10,000 of them?

21 A Yes 10,000 at that time, now I do 20,000.

22 Q That's like paper ones, right?

23 A You place them under the plate like this with  
24 the company logo.

25 Q So this is for the waiters when they get a

1 new customer, he doesn't need to change the cloth,  
2 he only replaces the the paper?

3 A He replaces everything every time a new  
4 customer sits down.

5 Q So the place mat is just to like prevent  
6 it from like staining?

7 A And to advertise.

8 Q And to advertise?

9 A Yes.

10 Q In the restaurant?

11 A Yes, that, and I provide it also when I hold  
12 outside parties.

13 Q Do you hold outside parties?

14 A Yes.

15 Q Do you do that as a business, or is that  
16 like your personal parties?

17 A No, what I do, here they call catering.

18 Q When did you start doing catering?

19 A The first one was in 1998 or 1999.

20 Q Do you know exactly when in 1998 or 1999?

21 A I think you have the file of papers.

22 (Pause.)

23 MS. DUBOWY: Let the record reflect he is  
24 talking to his attorney.

25 MR. WALL: Are you saying I have a receipt

1 from the hotel in Atlantic City?

2 THE WITNESS: A small agreement.

3 MS. DUBOWY: I would like to see that  
4 contract.

5 THE WITNESS: I think they had sent that  
6 to you.

7 Q Was that in the Taj Mahal?

8 A Yes.

9 Q Do you know someone at the Taj Mahal?

10 A No, somebody had called, a Brazilian guy  
11 called, there was a group of Brazilians who wanted  
12 to eat there.

13 Q A Brazilian guy called you in the  
14 restaurant and he said, "I would like you to" -- it  
15 was more like delivery?

16 A No, we went all prepared to do a barbecue right  
17 there.

18 Q On the site?

19 A The difference is that they didn't want us to  
20 actually cut the meat on the table, so we had to  
21 pre-cut them and bring pieces to the table.

22 Q But you cooked it?

23 A There.

24 Q Did you have to get an authorization from  
25 the hotel to do that?



1 A No, we had no problem, we got there ready to  
2 go.

3 Q So the person who hired you, the Brazilian  
4 guy probably had to talk to somebody in the hotel to  
5 let this happen, correct?

6 A Possibly.

7 Q Did you have other dealings with the hotel  
8 yourself, or was it just done through the Brazilian  
9 guy?

10 A No, the guy was the one who organized  
11 everything for us.

12 Q And after that you haven't done catering  
13 since then?

14 A Not in Atlantic City.

15 Q Did you do it anywhere else?

16 A Yes.

17 Q Where?

18 A I had it in Wildwood, it was a hotel called,  
19 what do they call it? I don't remember.

20 Q When was that?

21 A We catered to this hotel three years in a row.

22 Q When was the first time, was that before,  
23 or after, Taj Mahal?

24 A After.

25 Q How long after?

1 A I don't remember, but it was the following year  
2 or two years after, three years after, something  
3 like that.

4 Q Do you have any records about this as  
5 well?

6 A These parties were paid in cash so I don't have  
7 any checks or anything.

8 Q How many of those did you have?

9 A There, three.

10 Q And was it with the same guy who organized  
11 the Taj Mahal?

12 A No.

13 Q How did you find out about that  
14 opportunity?

15 A Someone who used to come eat at the restaurant  
16 asked if I could do the catering for the party and I  
17 said yes.

18 Q So it is kind of similar to the one at the  
19 Taj Mahal, someone came to your restaurant and liked  
20 your food and asked you to cater it, right?

21 A Yes, I think so.

22 Q Do you still keep in touch with that  
23 person?

24 A The name of the hotel is Madrid Hotel and it  
25 has been sold a little while ago so it no longer

1 exists.

2 The hotel owner, her name was Linda. She  
3 went to visit Brazil, Rio de Janeiro, she went to  
4 these Samba groups and she liked it very much, and  
5 that's how she contacted us.

6 Q So she went to the restaurant after she  
7 already knew of Brazil?

8 A No, one of our friends who is a regular at the  
9 restaurant ended up going to her hotel and they  
10 started to talk, he started to tell her that he knew  
11 a lot of lot of Brazilian things in Newark,  
12 Brazilian restaurants, and that there was a  
13 restaurant where they were regulars which was Boi na  
14 Brasa, and that whenever she wanted we could do  
15 something for her here.

16 Q So that was around, probably, you said the  
17 Taj Mahal was around 1998 and 1999, and then this  
18 one was probably when?

19 A I think Taj Mahal was 1997.

20 Q At first your testimony was that it was  
21 probably late 1998 to 1999.

22 A We are talking about twelve years ago, the  
23 date.

24 Q But you have the contract, right, you have  
25 some documents that has the exact date?



1 A I have one contract, I think I gave it to my  
2 attorney, I'm not sure, this is the only evidence  
3 that we have.

4 Q But the catering is after the Taj Mahal,  
5 the Madrid Hotel catering was afterward?

6 A It was afterwards, yes.

7 Q Was there any advertisement between 1996  
8 and 1999? I'm going back but I just want to go over  
9 this. Village Press, Brazilian Voice, banners,  
10 flyers, was there anything else that you remember?

11 A Tilindo--

12 MS. DUBOWY: I think I misspoke, I said  
13 Village Voice but I meant to say Brazilian Voice.

14 Q Did you ever advertise in the Village  
15 Voice, do you know what the Village Voice is?

16 A No.

17 Q So this was everything, right, Tiolindo?

18 A There were other newspapers that we advertised  
19 in such as Brazilian Times, but not much.

20 Q These are all community newspapers?

21 A What do you mean by "community"?

22 Q The Newark Brazilian community.

23 A No, these are New York as well as other states.

24 Q And how do you know this?

25 A It is in newspapers where they each go.



1 Q We would be interested in obtaining copies  
2 of those newspapers besides those that you have  
3 already produced.

4 A I don't have them.

5 Q You don't have any copies of those?

6 A No.

7 Q Not even invoices?

8 A No.

9 Q So it is just you telling us?

10 A Yes.

11 Q If you can tell us the names of the  
12 newspapers perhaps we can --

13 A But I have already told you the names.

14 Q Brazilian Voice, Brazilian Times,  
15 Brazilian Press and Luso Americano; were those the  
16 only four?

17 A What date?

18 Q Between July 1, 1996 and July 1, 1999?

19 A Yes.

20 Q After July 1st, 1999, was there anything  
21 besides those, was there anything else? I'm talking  
22 only about new newspapers?

23 A The Star-Ledger.

24 Q The Star-Ledger?

25 A Yes.

1 Q What is that?

2 A Star-Ledger is a newspaper from Newark.

3 Q It's a New Jersey newspaper?

4 A Yes.

5 MR. WALL: It's one I get at my house. I  
6 was just reading it this morning.

7 A I have it right in front.

8 (Short recess.)

9 Q So it's the Star-Ledger?

10 A The daily News.

11 Q The Star-Ledger, when was the first time  
12 that you advertised with the Star-Ledger?

13 A Star-Ledger?

14 Q Yes.

15 A I don't remember the date. We have the copies  
16 here.

17 Q Sometime in 2000?

18 A Later than 2000.

19 Q How about The Daily News, when did you  
20 first start advertising in The Daily News?

21 A Daily News, this year.

22 Q 2008?

23 A Yes.

24 Q This is a continuing request: I would  
25 like everything everything produced, just like that

1 which you have produced, just keep sending them to  
2 us.

3 A Comcast Cable.

4 Q Daily News 2008 and then Comcast Cable?

5 A Yes.

6 Q In?

7 A 2007.

8 Q The first time, was that the first time  
9 that you advertised on cable television?

10 A U.S. TV station, first time.

11 Q What TV station did you advertise on?

12 A Global News, 596 channel on the Dish Network.

13 Q The first time you advertised in  
14 television was in 2007. You did a Comcast Cable  
15 placed at Global News, correct?

16 A No.

17 Q Please explain to me when you first  
18 advertised on cable television?

19 A In 2000, I can't tell you exactly if it was  
20 2000, I have to look at the dates on the invoice.

21 Q Do you have the invoice?

22 A I can get it for you.

23 On Dish Network, Channel 596, Global.

24 Q In what year was that?

25 A I'm sorry, I don't know exactly.



1 Q Approximately?

2 A 2000.

3 Q Around 2000?

4 A Yes, when they started to have Brazilian TV  
5 here.

6 Q When you say "here " you are talking about  
7 where?

8 A In the country, Global, it reaches everywhere.

9 Q The advertising that was placed in 2000  
10 went everywhere?

11 A Yes.

12 Q You are going to give us the first  
13 invoice-- the invoice I have here for Global News,  
14 it is not 2000, it's 2004.

15 Does that refresh your recollection?

16 A Yes.

17 Q So that was the first time in 2004?

18 A It could have been before. I am not sure, I  
19 would have to ask someone.

20 Q All right.

21 A I can ask because I don't know how long  
22 Brazilian TV has been around here.

23 Q There is one here for TV Global  
24 International for 2003, do you think that's--

25 A I can't remember exactly, I think it was 2002,

1 2003 when TV was created here, when the station was  
2 created.

3 Q I think the first one we have is 2003. Was  
4 there anything in 2007 that you advertised on cable?

5 A 2007 I did.

6 Q And where?

7 A Comcast Cable.

8 Q Is Comcast Cable different from Global  
9 International?

10 A Yes.

11 Q What is Comcast Cable?

12 A Comcast Cable provides cable services.

13 Q How does your advertising reach the person  
14 who is watching TV through Comcast Cable, is that a  
15 channel, or is that--

16 A Comcast Cable is a company such as Cablevision,  
17 you also have Comcast Cable.

18 And then I have the channel, CNN.

19 Q But when you make an agreement with  
20 Comcast Cable does your agreement include on what  
21 channels on Comcast Cable the advertising will be  
22 placed with?

23 A Yes.

24 Q What channels were these?

25 A CNN, Food Network, and two more I wrote down

1 somewhere but I don't remember the name -- ESPN and  
2 another one as well.

3 Q Are those advertisements on those channels  
4 something that was distributed to the whole United  
5 States, or only here in Newark?

6 A I am just talking about this area in general,  
7 here in Newark, it goes out to Manhattan, Staten  
8 Island, I can't tell you from the top of my head, I  
9 would have to look at the paper.

10 Q It would be very important that you  
11 provide us with the exact contracts with the dates  
12 and where it was circulated and how many times.

13 The first time you did a contract with  
14 Comcast Cable was in 2007, it was not before?

15 A Nothing before.

16 Q Do you remember when in 2007?

17 A If I had the paper to show you--

18 Q Do you have it here?

19 (Pause.)

20 ( An informal discussion was had off the  
21 record.)

22 MS. DUBOWY: Let the record reflect that  
23 the deponent brought in some documents that we  
24 haven't seen before.

25 (Pause.)



1 Q I'm going to ask you the question again  
2 and perhaps you can answer the question using one of  
3 the documents?

4 A Okay.

5 Q So when was first time you contracted with  
6 Comcast specifically?

7 A October 15, 2007.

8 Q And do you have the contract with you, is  
9 the contract with the Comcast part of the documents  
10 that you have brought to the table?

11 A Yes.

12 MS. DUBOWY: I am going to ask for some  
13 time later on in the deposition to review the  
14 documents.

15 I am going to go back to the documents  
16 that we have.

17 So TV Global, you are going to give me  
18 anything that you have before 2003, the first one I  
19 have is 2003.

20 And then we need the contract, what was  
21 the circulation, what was the publication, for lack  
22 of a better word, of TV Global in the United States.

23 (Pause.)

24 Q What kind of advertisements -- first of  
25 all, have you done any advertising in New York City?

1 A Global TV reaches New York as well.

2 Q How about publications, how about  
3 newspapers, any newspapers?

4 A The Star-Ledger.

5 Q The Star-Ledger?

6 A Yes they had an article about us, Boi na Brasa.

7 Q When you talk about advertisements in the  
8 Star-Ledger, in this newspaper, are you talking  
9 about paid advertisements, or are you talking about  
10 articles?

11 A No, the Star-Ledger had an article about us  
12 that they did because they have a group of people  
13 who come to restaurants to eat there and write about  
14 them without our knowledge.

15 Q So you didn't pay for the --

16 A No.

17 Q -- for the insertion of your name in the  
18 Star-Ledger newspaper?

19 A No.

20 Q And when was this newspaper article  
21 published?

22 A One second.

23 Last year. We also had paid  
24 advertisements in the Star-Ledger.

25 Q Was that the first time you had paid



1 advertisements in the Star-Ledger?

2 A I believe so, yes.

3 Q Do you remember when?

4 A I couldn't tell you for sure but I have  
5 documents.

6 Q When was the article when the Star-Ledger  
7 came to review your restaurant?

8 A It was in 2002.

9 Q Can you also provide that?

10 A I think I have sent this to you.

11 Q Do you have any invoices for 2007 that we  
12 can look?

13 A Where?

14 Q The Star-Ledger invoices for paid  
15 advertising in 2007?

16 A I'm not sure, but we can get that.

17 Q So New York, the Star-Ledger insertion,  
18 the times -- the newspapers that reach New York  
19 according to your testimony are the Star-Ledger in  
20 2007, paid advertisement, and the Star-Ledger, the  
21 Star-Ledger in 2002 is the restaurant review?

22 A Correct.

23 Q Anything else as far as newspapers, print  
24 advertising?

25 A Brazilian Times, there is a newspaper in New

1 York called Brazilian Times.

2 Q Is that the newspaper that you referred to  
3 before?

4 A No, you asked the question if there were any  
5 other things in New York newspapers, specifically  
6 New York, correct?

7 Q Yes.

8 A The Star-Ledger, 2008 also I advertised in the  
9 Daily News, and I also paid for something to be done  
10 in the Brazilian Times, but it has been a while, I  
11 don't remember.

12 Q Is Brazilian Times, is that only  
13 circulated in New York, or does Brazilian Times  
14 also come out to Newark?

15 A The newspaper is from New York but some of it  
16 gets here as well.

17 Q And the Star-Ledger, is that, do you know  
18 where the headquarters of this newspaper is?

19 A No.

20 Q Do you think it is specifically a New York  
21 newspaper?

22 A No, but it is a very popular newspaper.

23 Q Where is it popular?

24 (Pause.)

25 MR. WALL: We don't have page 1.

1 MS. DUBOWY: We would be interested in  
2 learning more about the Star-Ledger newspaper  
3 circulation in 2002 and whatever you have after  
4 that.

5 MR. WALL: Off the record.

6 (An informal discussion was had off the  
7 record.)

8 Q As I understand it the Website for the  
9 Star-Ledger is nj.com?

10 A Yes.

11 Q Is that like newjersey.com?

12 A Correct.

13 Q So do you think that the Star-Ledger  
14 newspaper is a New Jersey newspaper?

15 A I don't know.

16 Q What else in New York besides Global  
17 International, Brazilian Times -- When was Brazilian  
18 Times, by the way?

19 A Brazilian Times, I told you it's been a long  
20 time, I don't remember.

21 Q Is it before, or after, July 1, 1999?

22 A After.

23 Q Well, if you have that, any kind of  
24 invoice, it would be very helpful.

25 So Brazilian Times sometime after July 1,



1 1999, the Star-Ledger in 2002, like a restaurant  
2 review, and then in 2007 you actually paid for  
3 advertisement in the Star-Ledger?

4 A Correct.

5 Q Any other print publications, print  
6 advertising?

7 A From the top of my head right now, I don't  
8 think so.

9 Q How about in the greater region of New  
10 York, newspapers, any print advertisement?

11 A No.

12 Q What did you have that was not printed?

13 A TV such as CNN and 12-NEWS

14 Q And the first one sometime in 2000  
15 --well, we don't know yet--

16 Q Global International was in 2003 or maybe  
17 the year before, I am not sure.

18 Q You are going to produce that to your  
19 counsel?

20 A If I have it I will submit it.

21 Q Any other cable or television ads or  
22 radio?

23 A Television, Global, Comcast, Spotlight, CNN,  
24 Fox, Food Network.

25 Q And that was the first time, right?

1 A Correct.

2 Q From October 15, 2007 to January 13, 2008?

3 A We have more, we have to March.

4 Q So when did you first start advertising in  
5 New York?

6 A TV, or newspaper?

7 Q Anything.

8 A 2003.

9 Q And you advertised after January 11, 2007,  
10 like this document you just handed to me now, it  
11 says October 15, 2007, you were advertising  
12 according to you, did this advertisement reach New  
13 York?

14 A I did not understand your question. Would you  
15 repeat it?

16 (The pending question was read back by the  
17 court reporter.)

18 Q I will restate the question.

19 So you advertised after January 11, 2007,  
20 in New York?

21 A What kind of advertisement, in a newspaper?

22 Q Anything.

23 A Before--

24 Q I am asking the question whether you have  
25 advertised after January 11, 2007?



1 A Yes.

2 Q What other activities have you done in New  
3 York, not necessarily advertising, have you done any  
4 kind of events in New York, what exactly have you  
5 done in New York, like catering?

6 A The large Brazilian party that they have on  
7 46th Street in New York.

8 Q What did you do there?

9 A Gave out flyers and t'shirts as well.

10 Q Since when have you been doing this?

11 A I only did this for two years.

12 Q Which years were these?

13 A We did it in 2005 or 6, I think 2005 and 2006.

14 Q And you haven't done it since then?

15 A No.

16 Q Why not?

17 A We just decided to stop it. It wasn't  
18 profitable, it was not the kind of people --  
19 actually, because this always happens on a Sunday  
20 which is a busy day for us here, there is a lot of  
21 work here for us.

22 So I stopped doing it and I decided  
23 instead to just take care of my restaurant here.

24 (Short recess.)

25 MS. DUBOWY: We are back on the record.

1 once earlier and then once another year, I went  
2 from here to the Caribbean about twice or so, but  
3 that's it.

4 Q The American part of the Caribbean, or  
5 were you able to go outside of the United States?

6 A I don't understand your question.

7 Q When you say that you travelled to the  
8 Caribbean, did you travel to the Caribbean in the  
9 U.S. territory?

10 A Dominican Republic.

11 Q When was that?

12 A Whenever I have time to travel I travel, I  
13 don't know.

14 Q And you fly, what is the airline you  
15 generally fly, do you have a preferred airline?

16 A Mexicana, whichever has the best flights.

17 Q Do you work generally inside, are you  
18 generally present in the restaurant at 70 Adams  
19 Street; are you generally at the location?

20 A In both, back and forth.

21 Q So you work every day?

22 A Yes. I do everything that needs to be done.

23 Q During the years that you have been  
24 working in the restaurant have you ever heard any  
25 customers mentioning about Boi na Braza in Atlanta

1 or in Dallas ?

2 A No.

3 Q Have you ever been questioned by customers  
4 whether you are related, this Boi na Brasa, with  
5 the Boi na Braza in Atlanta or Dallas?

6 A No, the first time I heard anything about Boi  
7 na Braza is when I received this letter.

8 Q Have you ever received a report from your  
9 employees of people, their friends, that mentioned  
10 that there may exist a Boi na Braza Churrascaria in  
11 Atlanta or Dallas?

12 A No.

13 Q So you never heard of Boi na Braza, with a  
14 Z, Restaurant until you received the letter on  
15 January 11, 2007?

16 A Yes.

17 Q That was the first time?

18 A Yes.

19 Q And there is no report from anybody that  
20 you know that asked you about the relationship  
21 between your Churrascaria Restaurant and my client's  
22 Churrascaria restaurant?

23 A No.

24 Q Is there anything else you want to add to  
25 your deposition, do you want to correct anything

# **EXHIBIT F**



1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 -----  
4 TERRA SUL CORPORATION a/k/a  
5 CHURRASCARIA BOI NA BRASA,

6 Petitioner,

7 v. CANCELLATION NO.: 92047056

8 BOI NA BRASA, INC.,

9 Respondent.  
10 -----

11 Transcript of the deposition of FARID SALEH,  
12 taken in the Law Offices of Simoes & Monteiro, P.C.,  
13 83 Polk Street, Newark, New Jersey, on August 7, 2008  
14 commencing at 10:01 a.m., held pursuant to Notice  
15 before a Shorthand Reporter and Notary Public.  
16  
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COPY



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20

21

22

23

24

25

ALSO PRESENT:

Zilda Buzack,  
Portuguese Interpreter  
(917) 686-7071

U.S. LEGAL SUPPORT, INC.

1 F. SALEH

2 Z I L D A B U Z A C K,

3 called as the official interpreter in this  
4 matter, was duly sworn by a Notary Public  
5 of the State of New York to accurately and  
6 faithfully translate the questions propounded  
7 to the witness from English to Portuguese and  
8 answers given from Portuguese to English.

9 F A R I D S A L E H,

10 having been duly sworn by a Notary Public  
11 of the State of New York, was examined and  
12 testified through an interpreter as follows:

13 DIRECT EXAMINATION

14 BY MR. CLARK:

15 Q State your full name for the record.

16 A Farid Saleh.

17 Q State your current address for  
18 the record.

19 A 148 Komorn Street, Apartment 3,  
20 Newark, New Jersey 07105.

21 Q We're on the record now.

22 Good morning, Farid.

23 A Good morning.

24 Q Do you understand why you  
25 were called here to testify today?

1 F. SALEH

2 A Yes.

3 Q What would that reason be?

4 A The reasons that we have a  
5 restaurant. There's another restaurant. Our  
6 restaurant which has the name, excusing the name,  
7 Boi Na Brasa. And a while back, I received a  
8 letter that they wanted me to remove the name of  
9 my restaurant so I'm here to answer, to say that  
10 we've been around before them, to speak the truth.

11 Q And Farid, do you understand that  
12 your testimony here today is to be taken as if  
13 you were in a courtroom before a judge and jury?

14 A Yes.

15 Q Okay. Farid, have you been  
16 deposed before?

17 A That last time that we were here,  
18 does that count?

19 Q Are you referring to the deposition  
20 in March?

21 A Yes.

22 Q Other than that deposition in March,  
23 have you ever been part of a deposition before?

24 A No.

25 Q Have you ever testified in a

1 F. SALEH

2 courtroom before?

3 A No.

4 Q Farid, how long have you lived in  
5 New Jersey?

6 A Eighteen years.

7 Q How long have you lived at your  
8 current address?

9 A That I bought the house, eight  
10 years.

11 Q Before you lived in New Jersey,  
12 where did you live?

13 A Brazil.

14 Q Farid, what is your current  
15 business or place of employment?

16 A Boi Na Brasa on 70 Adams Street,  
17 Newark.

18 Q How long have you been in this  
19 business?

20 MS. DUBOWY: Objection, ambiguous.

21 Q How long have you been in the  
22 restaurant business?

23 A Since I arrived here I've worked in  
24 the restaurant business.

25 Q How long have you worked for



1 F. SALEH

2 Boi Na Brasa?

3 A Since 1996.

4 Q Are you currently involved in any  
5 other businesses?

6 A No.

7 Q Who is the owner of Churrascaria  
8 Boi Na Brasa?

9 MS. DUBOWY: Objection, ambiguous.

10 A Terra Sul Corp.

11 Q What is the address of Churrascaria  
12 Boi Na Brasa?

13 A 70 Adams Street, Newark, New Jersey.

14 Q How long has Terra Sul Corp  
15 owned Churrascaria Boi Na Brasa?

16 A Since 1999.

17 Q Is Terra Sul Corp the original  
18 owner of Churrascaria Boi Na Brasa?

19 A No.

20 Q Who is the original owner  
21 of Churrascaria Boi Na Brasa?

22 A Churrascaria Boi Na Brasa Corp.

23 Q What is your role in Terra Sul Corp?

24 A President.

25 Q Well, did you have a role with



1 F. SALEH

2 A Yes.

3 Q What is the date issued?

4 A June 4, 1996.

5 Q Thank you.

6 When did Churrascaria Boi Na Brasa  
7 first open for business?

8 MS. DUBOWY: Objection, ambiguous.

9 MR. CLARK: Go ahead, you can  
10 answer the question.

11 MS. DUBOWY: Sorry, I think  
12 there are two companies and there are  
13 two Churrascarias, so to speak.

14 When you ask the question you  
15 have to say which one you're referring to.

16 Q How many Churrascaria Boi Na Brasa  
17 are there?

18 A Two, Boi Na Brasa. One,  
19 Churrascaria Boi Na Brasa.

20 Q To clarify, there is one  
21 restaurant called Churrascaria Boi Na Brasa?

22 A Yes.

23 Q And when did that restaurant  
24 open for business?

25 A April of '96.

1 F. SALEH

2 MS. DUBOWY: Off the record.

3 (Whereupon, an off-the-record  
4 discussion was held.)

5 Q What is the first restaurant  
6 that you opened?

7 A Churrascaria Boi Na Brasa.

8 Q Now this document you see before  
9 you here, where is this real estate located?

10 A On 70 Adams Street where we  
11 have been till this day.

12 MR. CLARK: I'm going to  
13 introduce Exhibit Number 4.

14 MS. DUBOWY: Counsel, are you  
15 going to lay a foundation for the next  
16 documents because you didn't lay a  
17 foundation for this one, for Exhibit  
18 Number 3.

19 MR. CLARK: Off the record.

20 (Whereupon, an off-the-record  
21 discussion was held.)

22 Q Now if we can go back to Exhibit  
23 Number 3, Farid, when you decided to try to open  
24 a restaurant, what steps did you take?

25 A First of all, we needed to have

1 F. SALEH

2 a place so we started to search for a place in  
3 Newark because we wanted to have an establishment  
4 in Newark, because we knew a lot of people around  
5 here, and then we found this restaurant that  
6 was located on 70 Adams Street. This gentleman  
7 wanted to sell it because he was already old and  
8 he wanted to return to Brazil, and then he asked  
9 for a price, we made an offer, he accepted --  
10 they accepted and then we started.

11 Q Now Farid, what we've marked as  
12 Exhibit 3, is that an accurate reflection of  
13 your offer to purchase the real estate at  
14 70 Adams Street?

15 A Yes.

16 Q Did you sign this document  
17 as the perspective buyer?

18 A Yes.

19 Q Is your signature on this  
20 document we've marked as Exhibit 3?

21 A Yes.

22 Q When did you sign this document?

23 A In February of '96.

24 Q Farid, did you end up purchasing  
25 the real estate located at 70 Adams Street?

1 F. SALEH

2 name Boi Na Brasa in the restaurant business?

3 A No one.

4 Q In 1996, how did you inform people  
5 and customers that your restaurant Churrascaria  
6 Boi Na Brasa was open?

7 A In those days since things were  
8 difficult, there wasn't a lot of money around,  
9 we made flyers to put on cars, things like that,  
10 neighborhood stores and also word of mouth.

11 Q Did you advertise in local  
12 newspapers?

13 A Actually, I think there was an  
14 article as soon as we opened the restaurant but  
15 it wasn't an article. It wasn't paid for but we  
16 started to advertise in newspaper after we had  
17 opened up the restaurant because we had money  
18 and we had a small ad.

19 Q When did you first start  
20 advertising Churrascaria Boi Na Brasa?

21 A In newspapers?

22 Q Anywhere?

23 A Well, in '96 we made the flyers to  
24 circulate around town. Newspapers, we started in  
25 1997, I think. I'm not a hundred percent sure.



1 F. SALEH

2 Q Did you advertise with the  
3 Brazilian Press in 1997?

4 A In 1997 we started with the  
5 newspapers, yes.

6 Q You put an advertisement for  
7 Churrascaria Boi Na Brasa in the Brazilian Press?

8 MS. DUBOWY: Objection, leading.

9 Q In 1997, did Churrascaria Boi Na  
10 Brasa put an advertisement in local newspapers?

11 A Yes.

12 Q In 1997, which newspapers did  
13 Churrascaria Boi Na Brasa advertise in?

14 A Brazilian Press. I'm not sure  
15 but also maybe Brazilian Voice.

16 MR. CLARK: I'd like to  
17 introduce Exhibit Number 15.

18 (Whereupon, a five-page  
19 document was marked as Plaintiff's  
20 Exhibit Number 15 for identification  
21 as of this date.)

22 Now, this doesn't have a Bates  
23 number on it but it was produced earlier  
24 with a Bates number.

25 Q Farid, have you seen this



1 F. SALEH

2 document before?

3 A Yes, I have. It's like I go back  
4 in time.

5 Q You've seen this document before?

6 A Yes, I have.

7 MS. DUBOWY: Objection, there  
8 are two documents, two newspapers.

9 MR. CLARK: Yes.

10 MS. DUBOWY: So when you say  
11 "document" like which document?

12 Q The first two pages, have you  
13 seen these before?

14 A Yes.

15 Q The first two pages of  
16 this document, what is it?

17 A This is the cover page for  
18 Brazilian Press which is our community's  
19 newspaper.

20 Q Is there an advertisement for  
21 Churrascaria Boi Na Brasa on either of these  
22 first two pages?

23 A Yes.

24 Q Where is this advertisement?

25 A It's on this second page here,

1 F. SALEH

2 bottom.

3 Q What is the date of this  
4 advertisement?

5 A It's the week of 17 to 23 of  
6 September, 1997.

7 Q Is this an accurate reflection  
8 of an advertisement you placed with the  
9 Brazilian Press in September of 1997?

10 A Yes.

11 Q Pages 3 and 4 of this document,  
12 have you seen these before?

13 A Yes.

14 Q Did Churrascaria Boi Na Brasa  
15 place an advertisement on either of these  
16 two pages?

17 MS. DUBOWY: Objection, foundation.

18 Q Did Churrascaria Boi Na Brasa  
19 place an advertisement in the Brazilian Press  
20 in 1999?

21 MS. DUBOWY: Objection, leading.

22 MR. CLARK: Let me rephrase.

23 Q In 1999, did Churrascaria  
24 Boi Na Brasa advertise in newspapers?

25 A Yes.

1 F. SALEH

2 Q In 1999, did Churrascaria  
3 Boi Na Brasa ever advertise with the  
4 Brazilian Press?

5 MS. DUBOWY: Objection, leading.

6 Q What newspapers did Churrascaria  
7 Boi Na Brasa advertise with in 1999?

8 A Brazilian Press.

9 Q Are pages 3 and 4 of Exhibit 15  
10 an accurate reflection of the advertisements  
11 you placed with the Brazilian Press in 1999?

12 MS. DUBOWY: Objection, ambiguous.  
13 You didn't establish time.

14 Q On pages 3 and 4 of this document,  
15 is this an accurate representation of an  
16 advertisement placed by Churrascaria Boi Na Brasa?

17 A Aren't you talking about  
18 pages 2 and 4?

19 Q 3 and 4.

20 A Could you repeat the  
21 question please.

22 Q Sure.

23 On pages 3 and 4 of this document,  
24 is the advertisement for Churrascaria Boi Na Brasa  
25 an accurate reflection of the advertisement in the

1 F. SALEH

2 Brazilian Press?

3 A Yes.

4 Q When did Churrascaria

5 Boi Na Brasa place this ad?

6 A This ad was on November 17, 1999.

7 Q Was Churrascaria Boi Na Brasa  
8 open for business in 1999?

9 A Yes.

10 MS. DUBOWY: Objection, ambiguous.

11 Q In 1999, was Churrascaria  
12 Boi Na Brasa open?

13 A It was open, it had operations.

14 Q In 1999, was Churrascaria  
15 Boi Na Brasa still operating as a restaurant?

16 A Yes.

17 Q Does Churrascaria Boi Na Brasa  
18 ever cater?

19 A We've always done that.

20 Q When did Churrascaria  
21 Boi Na Brasa first start catering?

22 A Well, actually in '96 we had a big  
23 catering event. It was big for us because we  
24 were small and this opportunity came up. We did  
25 a catering event in Atlantic City.



1 F. SALEH

2 INTERPRETER: The interpreter will  
3 correct herself on the record literally,  
4 "we did one in Atlantic City."

5 Thank you.

6 Q This catering event in  
7 Atlantic City, when was it?

8 A I don't remember the exact date  
9 right now but it was '96 or into '97. It was  
10 right in the beginning.

11 Q Who was this catering event for?

12 A It was for the Taj Mahal Casino,  
13 Trump Taj Mahal.

14 MR. CLARK: I'd like to  
15 enter Exhibit 16.

16 (Whereupon, a one-page  
17 document was marked as Plaintiff's  
18 Exhibit Number 16 for identification  
19 as of this date.)

20 Q Farid, have you seen this  
21 document before?

22 A Yes.

23 Q What is this document?

24 A This is an agreement between  
25 Churrascaria Boi Na Brasa and Taj Mahal Casino



1 F. SALEH

2 for Brazilian food catering.

3 Q Is this an accurate reflection of  
4 the agreement between Churrascaria Boi Na Brasa  
5 and the Trump Taj Mahal?

6 A For this event, yes.

7 Q What was the date of this agreement?

8 A According to this document in  
9 front of me, the date is June 7, 1996.

10 Q Did Churrascaria Boi Na Brasa  
11 complete a catering event for the Trump Taj Mahal  
12 in June of 1996?

13 A Yes.

14 Q Where else has Churrascaria  
15 Boi Na Brasa catered events?

16 MS. DUBOWY: Objection,  
17 failed to establish foundation.

18 Q Has Churrascaria Boi Na Brasa  
19 ever catered to other people or entities?

20 A Yes.

21 Q Was this exclusively in New Jersey?

22 A No. We do it in New Jersey.  
23 I've done it in New York and Connecticut.

24 Q When did Churrascaria  
25 Boi Na Brasa cater an event in New York?

1 F. SALEH

2 A I'm not sure but I think  
3 three years ago.

4 Q Do you remember who Churrascaria  
5 Boi Na Brasa catered to in New York approximately  
6 three years ago?

7 A I'm not really sure but the thing  
8 is we got this catering event from this female.  
9 She was a relative of the Madrid Hotel in Wildwood  
10 in New Jersey and we did catering for her there  
11 during three years. And then they sold the hotel  
12 and we continued doing it for their family in  
13 New York, they had moved to New York.

14 Q Thank you.

15 From 1996 to the present time,  
16 has Churrascaria Boi Na Brasa ever shut down?

17 A No.

18 Q From 1996 to the present time,  
19 has Churrascaria Boi Na Brasa ever stopped doing  
20 business at its current location in New Jersey?

21 A No.

22 Q From 1996 to the present time,  
23 has Churrascaria Boi Na Brasa ever identified  
24 itself by a different name to the public?

25 A No.

1 F. SALEH

2 on the menu and after that it came out -- I don't  
3 know how you call that thing in the front of the  
4 restaurant that we put on, canopy.

5 Q Are you referring to a sign?

6 A Yes, the sign, a design with a logo  
7 and the name. I have pictures back home.

8 Q When did Churrascaria Boi Na Brasa  
9 open?

10 A April of 1996.

11 Q When Churrascaria Boi Na Brasa  
12 opened in April of 1996, where was it located?

13 A 70 Adams Street, Store Number 4,  
14 Newark, New Jersey. That's where we have been  
15 until this day.

16 Q What is Terra Sul Corp?

17 A The Terra Sul Corp is a  
18 corporation that I have opened and it  
19 owns Churrascaria Boi Na Brasa.

20 Q When did Terra Sul Corp acquire  
21 ownership of Churrascaria Boi Na Brasa?

22 A It was in 1999.

23 Q Is Terra Sul a registered  
24 corporation?

25 A Yes.

1 F. SALEH

2 Q Where is Terra Sul Corp registered?

3 A The State of New Jersey.

4 MR. CLARK: I'd like to  
5 introduce Exhibit Number 18.

6 (Whereupon, a one-page  
7 document was marked as Plaintiff's  
8 Exhibit Number 18 for identification  
9 as of this date.)

10 Q Have you seen this document before?

11 A Yes.

12 Q What is this document?

13 A When Terra Sul was filed.

14 Q What is this document?

15 A It's the registration for  
16 Terra Sul Corp.

17 Q And when was this registration  
18 filed?

19 A January 19, 1999.

20 Q Now is this page identified as  
21 TS1251, is that an accurate reflection of the  
22 Certificate of Incorporation for Terra Sul Corp?

23 A Yes.

24 MS. DUBOWY: Do you want to  
25 offer these separately since they



1 F. SALEH

2 my web site. And I was afraid so I came here  
3 to Fausto, to my attorney, and I started to  
4 do things, to gather evidence to see what was  
5 going on. I wanted to show that my company  
6 was registered, that everything was correct  
7 because my restaurant is very important to me  
8 and for my family.

9 Q What restaurants does Terra Sul Corp  
10 presently own?

11 A Churrascaria Boi Na Brasa.

12 Q Where is that restaurant located?

13 A 70 Adams Street, stores number 3  
14 and 4 in Newark, New Jersey.

15 MR. CLARK: I'll introduce  
16 Exhibit Number 20.

17 (Whereupon, a one-page  
18 document was marked as Plaintiff's  
19 Exhibit Number 20 for identification  
20 as of this date.)

21 Q Farid, does Terra Sul Corp  
22 collect taxes in New Jersey?

23 A Yes.

24 Q Is there any document that  
25 authorizes Terra Sul Corp to collect taxes



1 F. SALEH

2 Q Does Churrascaria Boi Na Brasa  
3 have a web site?

4 A Yes.

5 Q What is the domain name for this web  
6 site?

7 A Www.boinabrasa.com.

8 Q Who owns this domain name?

9 A I do, Farid Saleh.

10 Q How long have you owned this  
11 domain name?

12 A I'm not really sure. Since 2000 or  
13 2001 when they started with the whole internet  
14 thing up until this day.

15 Q Do you advertise for  
16 Churrascaria Boi Na Brasa on this web site?

17 A Yes.

18 Q Who is Boi Na Braza, Braza with a Z?

19 A I found out about this other Boi Na  
20 Brasa that there was a similar one when I got this  
21 letter in January of 2007.

22 Q When is the first time you heard of  
23 a restaurant called Boi Na Braza, Braza with a Z?

24 A When I received the letter from  
25 their attorneys.

1 F. SALEH

2 Q Do you have any personal connection  
3 to this Boi Na Braza restaurant, Boi Na Braza with  
4 a Z?

5 A No.

6 Q Does Terra Sul Corp have any  
7 connection to this Braza restaurant, Braza  
8 with a Z?

9 A No.

10 Q Do you, personally, have any  
11 business associations with this Boi Na Braza  
12 restaurant, Braza with a Z?

13 A No.

14 Q Do you own or operate any  
15 restaurants in Texas?

16 A No.

17 Q Do you own or operate any  
18 restaurants in Ohio?

19 A No.

20 Q Do you own or operate any  
21 restaurants in Georgia?

22 A No.

23 Q How did you first learn about  
24 this Boi Na Braza restaurant, Braza with a Z?

25 A It was when we received the letter.

1 F. SALEH

2 This letter was from some lawyers. I think they  
3 were from Texas. And as I said before, they  
4 wanted us to close our business because they  
5 have rights.

6 Q When did you receive this  
7 letter from these Texas lawyers?

8 A It was in the beginning of  
9 January 2007.

10 MR. CLARK: I would like to  
11 introduce Exhibit Number 21.

12 (Whereupon, a four-page  
13 document was marked as Plaintiff's  
14 Exhibit Number 21 for identification  
15 as of this date.)

16 A That's a letter.

17 Q Farid, have you seen this  
18 document before?

19 A Yes, I have.

20 Q What is this document?

21 A That's a letter they sent us.  
22 That's where they said that they wanted us --  
23 that's why I spoke with my lawyer about this.

24 Q What is the date on this document?

25 A January 11th, 2007.

1 F. SALEH

2 A After I got this news, I contacted  
3 the lawyers and then we started immediately  
4 after receiving the letter, on the first week  
5 we started.

6 Q Farid, to the best of your  
7 knowledge, has Boi Na Braza, Braza with a Z,  
8 ever opened a restaurant in New Jersey?

9 A No.

10 Q To the best of your knowledge,  
11 has Boi Na Braza, Braza with a Z, ever opened  
12 a restaurant in New York?

13 A No.

14 Q Are you aware of any advertisements  
15 by Boi Na Braza, Braza with a Z, in New Jersey?

16 A No.

17 Q Are you aware of any advertisements  
18 by Boi Na Braza, Braza with a Z, in New York?

19 A No.

20 Q To the best of your knowledge,  
21 who was the first to use the term Boi Na Brasa  
22 anywhere in the United States?

23 MS. DUBOWY: Objection, ambiguous.

24 Q To the best of your knowledge, who  
25 is the first to use the term Boi Na Brasa, Brasa



1 F. SALEH

2 Corp or Gullas Corp use the term Brasa with a Z  
3 or an S, to identify a restaurant located in  
4 New Jersey?

5 A No.

6 Q What does the term Boi Na Brasa  
7 mean in English, Brasa with an S?

8 A Ember.

9 Q What does the term Boi Na Braza  
10 mean in English, Braza with a Z?

11 A The correct way to write Brasa  
12 is with an S because S sounds like Z when it's  
13 between two vowels. So Brasa with an S is what  
14 ember is and Braza with a Z which is used here  
15 with a Z, is a slang such as I came from Braza.  
16 I came from Brazil; these slippers come from  
17 Braza. A lot of things they use the term Braza  
18 for; where are you from, I'm from Braza.

19 Q Has any customer of yours ever  
20 asked you about a Boi Na Brasa restaurant in  
21 Texas?

22 A No.

23 Q Has any customer of yours ever  
24 asked you about a Boi Na Brasa restaurant in Ohio?

25 A No.

1 F. SALEH

2 Q Has any customer of yours ever asked  
3 you about a Boi Na Brasa restaurant in Georgia?

4 A No.

5 Q Now you've testified earlier today,  
6 Churrascaria Boi Na Brasa has catered to New York,  
7 is that correct?

8 A Yes.

9 Q Have you ever considered opening  
10 up a Boi Na Brasa restaurant in New York?

11 A Yes, I have.

12 Q Does Churrascaria Boi Na Brasa  
13 have customers that reside in New York?

14 A Uh-hmm, for sure.

15 Q Has any New York publication ever  
16 written a review of Churrascaria Boi Na Brasa?

17 A Yes.

18 MR. CLARK: I'd like to  
19 introduce Exhibit Number 22.

20 MS. DUBOWY: Was this produced?

21 MR. CLARK: That was given  
22 to your counsel the day that they  
23 sent the letter.

24 MS. DUBOWY: But it  
25 was not produced.

1 F. SALEH

2 MR. CLARK: It's been produced,  
3 it just didn't have a Bates number on it.  
4 It was produced even before discovery  
5 started. They have an e-mail from  
6 January 2007 attached to that.

7 MS. DUBOWY: All right.

8 (Whereupon, a seven-page  
9 document was marked as Plaintiff's  
10 Exhibit Number 22 for identification  
11 as of this date.)

12 Q Farid, have you seen this  
13 document before?

14 A Yes, I have.

15 Q What is the Village Voice?

16 A It's a small newspaper published  
17 in New York. It's also for the community.

18 Q What is this document?

19 A It's information material for  
20 the community and everything, food, you know.

21 As you can see, there's web sites,  
22 everything here.

23 Q Does Churrascaria Boi Na Brasa  
24 have a marketing presence in New York?

25 MS. DUBOWY: Objection, ambiguous.

1 F. SALEH

2 Q Does Churrascaria Boi Na Brasa  
3 advertise in New York?

4 A Yes.

5 Q Does Churrascaria Boi Na Brasa  
6 advertise in Connecticut?

7 A Yes.

8 MR. CLARK: I have no  
9 further questions.

10 (Whereupon, at 1:00 p.m. a  
11 brief recess was taken and at 1:53 p.m.  
12 the deposition recommenced.)

13 CROSS EXAMINATION

14 BY MS. DUBOWY:

15 Q Good afternoon, Mr. Farid Saleh.  
16 May I say Farid or Saleh?

17 A Farid.

18 Q Farid, did you review any  
19 documents from the time we finished here  
20 today at 1 o'clock to now?

21 A No.

22 Q Did you review any documents  
23 from our last meeting in March to now, in  
24 connection to this proceeding?

25 A Yes.



1 F. SALEH

2 for a legal conclusion.

3 MS. DUBOWY: He may know.

4 He is a business owner. He has  
5 been in the business for ten years.  
6 He knows what he has to do in order  
7 to have a restaurant.

8 MR. CLARK: You're assuming  
9 he knows the law fully because he is  
10 a business owner.

11 MS. DUBOWY: You can answer  
12 if you know the question.

13 A I did not understand the question.

14 Q Do you need the Certificate of  
15 Authority in order to do your business?

16 A Yes, I do.

17 Q Why you need the Certificate of  
18 Authority?

19 A To collect taxes.

20 Q So without the Certificate of  
21 Authority, you cannot sell food in your  
22 restaurant?

23 A Where does it say?

24 Q You just told me that in order  
25 to do your business you need the Certificate of

1 F. SALEH

2 Authority, and then I asked you why is that and  
3 you responded.

4 A I answered yes.

5 Q Why?

6 A But and then I asked her the  
7 question where is it written that I can't.

8 MS. DUBOWY: You can ask me  
9 all the questions after we finish here.  
10 For now, I have priority of asking the  
11 questions, okay.

12 A Okay.

13 Q Why do you think you need the  
14 Certificate of Authority in order to do your  
15 business which is the business of restaurant?

16 A It's ordered by the state that  
17 you have to pay taxes over what you sell, a  
18 product you sell.

19 Q So it's not sufficient just to get  
20 the registration of the company. You also need  
21 to comply with additional bureaucratic hoops, one  
22 being of getting Certificate of Authority, isn't  
23 it?

24 MR. CLARK: Objection, form.

25 MS. DUBOWY: Why?

1 F. SALEH

2 MR. CLARK: What's required,  
3 to do what?

4 MS. DUBOWY: Business.

5 MR. CLARK: What business?

6 MS. DUBOWY: His business.

7 MR. CLARK: Please ask him that.

8 MS. DUBOWY: I think I  
9 asked the question.

10 Q So in order to do your business of  
11 restaurant, Churrascaria Boi Na Brasa, it's not  
12 only sufficient to file this registration of the  
13 company. You also need additional permits such  
14 as the Certificate of Authority, correct?

15 A You need various different  
16 papers in order to operate legally.

17 Q This being one of them?

18 A This is one of them.

19 Q So let's go back to your Exhibit 18  
20 which is the document that shows the registration  
21 of Terra Sul Corp, isn't it?

22 A Yes.

23 Q So what is this document again?

24 A Registration for the corporation,  
25 Terra Sul Corporation.

1 F. SALEH

2 Q Do you remember when was it filed?

3 A January 19, 1999.

4 Q And then we have Exhibit 20 which  
5 is the Certificate of Authority for Terra Sul  
6 Corp. Can you read for us tax registration number  
7 on that Certificate of Authority?

8 A 2-2-3-6-3-8-6-5-2.

9 Q Can you read the effective date?

10 A 4-1-99.

11 Q Can you also read to us when was the  
12 Certificate of Authority issued to your company?

13 A 8-27-02.

14 Q This was the first Certificate of  
15 Authority that Terra Sul Corporation received?

16 A I think so.

17 Q So between '99 or rather, between  
18 January 19, 1999 which is when you incorporated  
19 your company Terra Sul Corporation and August 27,  
20 2002, Terra Sul Corporation did not have a  
21 Certificate of Authority, isn't it?

22 MR. CLARK: Objection, form.

23 MS. DUBOWY: This question is fine.

24 Don't object to form if you don't have  
25 basis please.



1 F. SALEH

2 You can respond.

3 MR. CLARK: Objection, form;  
4 assumes facts not in evidence.

5 MS. DUBOWY: We have established  
6 that the Certificate of Authority for  
7 Terra Sul Corporation was issued on  
8 August 27, 2002. The corporation was  
9 incorporated in January 19, 1999.  
10 Everything here is a conclusion that's  
11 already in the record.

12 MR. CLARK: You have a paper  
13 that says it was issued on August 27, 2002.  
14 There might have been authority issued  
15 that was not part of this so you're  
16 assuming facts not in evidence.

17 MS. DUBOWY: Let me ask the  
18 question. I'm asking the question  
19 to him. You are not the one being  
20 deposed. Please keep yourself with  
21 the legal questions.

22 MR. CLARK: Please don't  
23 put words in my client's mouth.

24 MS. DUBOWY: I ask you not to  
25 interrupt me if you're not really --

1 F. SALEH

2 MR. CLARK: -- I have a fair  
3 objection I want to get on the record.

4 Q You testified here earlier  
5 today that this was the first time that  
6 Terra Sul Corporation received this  
7 Certificate of Authority.

8 MR. CLARK: Objection,  
9 mischaracterizes previous testimony.

10 MS. DUBOWY: Read back the question.

11 (Whereupon, the requested  
12 portion of the record was read back  
13 by the reporter, as above recorded.)

14 Q You said earlier today that you  
15 thought that Exhibit 20 was the first time the  
16 company was issued a Certificate of Authority,  
17 your company being Terra Sul Corporation.

18 Are there any documents that, if  
19 I show to you, would refresh your recollection  
20 as to that was the first time you received  
21 Certificate of Authority for Terra Sul  
22 Corporation?

23 A You can show it to me.

24 Q You don't remember that Terra Sul  
25 Corporation was issued a Certificate of Authority

1 F. SALEH

2 before August 27, 2002?

3 A I don't remember. All I know  
4 is we paid taxes every month, every month.  
5 We never stopped paying them.

6 MS. DUBOWY: If there are any  
7 documents that show that you received  
8 the Certificate of Authority for  
9 Terra Sul Corporation before August 27,  
10 2002, we would like to see them.

11 Q Now I'm going to show you another  
12 document that you were shown today. I'm showing  
13 you Exhibit Number 3. I'm going to direct your  
14 attention to the second page of the exhibit.

15 Can you tell us, this is a  
16 Promissory Note, right?

17 A Yes.

18 Q And it's dated March 22nd, 1996?

19 A Yes.

20 Q And it's for \$13,000?

21 A Yes.

22 Q And it's signed by you?

23 A Yes.

24 Q You signed this note on behalf  
25 of the company, on behalf of a company or you

1 F. SALEH

2 signed on your own individual behalf?

3 A When I bought the company  
4 Boi Na Brasa, when I did the business of buying  
5 it, this Promissory Note was the purchase that we  
6 made, the real estate purchase. So I owed  
7 \$13,000. So we made a deal, he and I, that  
8 I would pay monthly installments without  
9 any interest.

10 Q Who did you have to pay?

11 A To the owner of the restaurant  
12 that we were buying.

13 Q You testified earlier today that  
14 you, Farid, used the term Boi Na Brasa in the  
15 United States before my client, isn't it?

16 A Yes.

17 Q You also said that Gullas  
18 Corporation and Terra Sul Corporation  
19 currently use the Boi Na Brasa mark?

20 A Yes.

21 Q Do you have any documents that  
22 shows that you gave permission for those two  
23 companies to use the mark, Boi Na Brasa mark?

24 A The two companies are my company.

25 Q You testified earlier today that --



1 F. SALEH

2 let's go back here actually.

3 MS. DUBOWY: Read back the question.

4 (Whereupon, an extensive portion  
5 of the record was read back by the  
6 reporter, as above recorded.)

7 Q You testified earlier today that  
8 Boi Na Brasa catered an event for a relative of  
9 the owner of the Hotel Madrid in New York, yes?

10 A Hotel Madrid is located in  
11 New Jersey, Wildwood.

12 Q That was not my question.

13 A The person I did the event for,  
14 she lives in New York. I only mentioned her  
15 because I met her. She's part of the family  
16 of the owner of the Hotel Madrid which was  
17 sold just recently.

18 Q So you testified earlier today  
19 that a relative of Hotel Madrid had a catered  
20 event by you, by Boi Na Brasa in New York?

21 A In New York, yes.

22 Q I'm going to direct your attention  
23 to your deposition from March of this year.

24 Do you need a transcript?

25 MR. CLARK: I don't have a

1 F. SALEH

2 copy of it.

3 Q When I asked then whether you had  
4 catered events in New York your answer was no, and  
5 I'm going to give you the opportunity to explain  
6 now why the answer is different. It's on page 34,  
7 line 5 of your deposition.

8 Reading from his deposition  
9 in March 2008:

10 "Q. What other activities  
11 have you done in New York, not  
12 necessarily advertising, have  
13 you done any kind of events in  
14 New York, what exactly have  
15 you done in New York, like  
16 catering?

17 A. The large Brazilian  
18 party that they have on  
19 46th Street in New York.

20 Q. What did you do there?

21 A. Gave out flyers and  
22 T-shirts as well.

23 Q. Since when have you  
24 been doing this?

25 A. I only did this for

1 F. SALEH

2 two years.

3 Q. Which years were these?

4 A. We did it in 2005 or 6,  
5 I think 2005 and 2006.

6 Q. And you haven't done  
7 it since then?

8 A. No.

9 Q. Why not?

10 A. We just decided to stop it.  
11 It wasn't profitable, it was not  
12 the kind of people -- actually,  
13 because this always happens on  
14 a Sunday which is a busy day for  
15 us here, there is a lot of work  
16 here for us. So I stopped doing  
17 it and I decided instead to just  
18 take care of my restaurant here."

19 He can go now and explain the  
20 contradictions between the two testimonies.

21 A Okay. First of all, there's no  
22 contradiction. This 46th Street festival which  
23 is out, and it's going to be out again this year,  
24 this is an opportunity for everyone to see  
25 Brazilian bands. Nobody pays to go there.

1 F. SALEH

2 It's a lot of people, almost one million people.  
3 That time when I said this, I went there to give  
4 out T-shirts and flyers as I said. When I said  
5 that I went to New York, I went to make money on  
6 this catering event, at this party at a house, at  
7 a house in New York. I went there because this  
8 person Linda, her name is Linda, who owned Madrid  
9 Hotel in Wildwood, I had been doing events for  
10 her for three years. She liked Brazil a lot.  
11 She had been to Brazil. So there was a party  
12 with Brazilians and Americans. It was a soccer  
13 game so later when she decided to sell the hotel  
14 and to retire the following year, I received a  
15 call from a member of that family to see if I can  
16 do catering at their house.

17 Q Yeah, but my question was a little  
18 different. When I asked whether you had done  
19 events like catering in New York before, you  
20 didn't respond; you didn't say that you had done  
21 this event, why is that?

22 A I might not have remembered  
23 this one.

24 May I say something?

25 MS. DUBOWY: Can you read



1 F. SALEH

2 the last question.

3 (Whereupon, the requested  
4 portion of the record was read back  
5 by the reporter, as above recorded.)

6 Q Why is that, that's the question  
7 to you.

8 INTERPRETER: Please let  
9 the reporter repeat.

10 (Whereupon, the requested  
11 portion of the record was read back  
12 by the reporter, as above recorded.)

13 A Well, first of all, I don't have  
14 anything to hide. Events, large events that I  
15 held in the Brazilian party --

16 Q -- that was not my question.

17 A So what is your question?

18 MS. DUBOWY: Can you read  
19 the question back to him.

20 (Whereupon, the requested  
21 portion of the record was read back  
22 by the reporter, as above recorded.)

23 A I didn't think it was important.  
24 It's the same thing when September 11 happened,  
25 we donated food for people who were assisting

1 F. SALEH

2 from March was:

3 "What other activities have you  
4 done in New York, not necessarily advertising,  
5 have you done any kind of events in New York,  
6 what exactly have you done in New York, like  
7 catering?"

8 Is that correct?

9 A Correct.

10 Where is it; okay.

11 Q Is that correct?

12 A Correct.

13 Q What was your answer?

14 MS. DUBOWY: Are you going  
15 to ask him to read from the transcript?

16 MR. CLARK: From the transcript.

17 A The answer that I gave her for  
18 this question that she posed, I mentioned this  
19 festival because it's what came to my mind, what  
20 I remembered at that time.

21 MS. DUBOWY: Objection. I  
22 was under the impression that you  
23 want him to read from the transcript?

24 MR. CLARK: Right.

25 Can you read back exactly.

1 F. SALEH

2 A I don't even know what the question  
3 is because I can't even read this; where is it?  
4 Should I read that in English?

5 Q You can translate it back to her  
6 and she can read it in English.

7 A She had asked if I had done any  
8 catering or advertisements in New York, correct?

9 Q Correct. And what was your exact  
10 answer?

11 A Yes.

12 Q What was your exact answer?

13 WITNESS: Giving out flyers  
14 and T-shirts as well.

15 Q The answer before that?

16 WITNESS: "The large Brazilian party  
17 that they have on 46th Street in New York."

18 Q After you gave this answer to her,  
19 did she at any time ask you what else did you do  
20 in New York?

21 A No.

22 Q Did you at any time testify in March  
23 of this year, that that was the only thing you did  
24 in New York?

25 A No.

C E R T I F I C A T E

STATE OF NEW YORK     )

COUNTY OF NEW YORK    )

I, MADELINE RODRIGUEZ, a Shorthand Reporter  
and Notary Public for the State of New York, do  
hereby certify that FARID SALEH, the witness whose  
EXAMINATION BEFORE TRIAL was held on August 7th, 2008,  
as hereinbefore set forth, was duly sworn by me, and  
that this transcript of such examination is a true and  
accurate record of the testimony given by such witness.

I further certify that I am not related to any of  
the parties to this action by blood or by marriage and  
that I am in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 11th day of August, 2008.

  
MADELINE RODRIGUEZ



DEPOSITION OF FARID SALEH - 8/7/2008

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 2 ONE PENN PLAZA, NEW YORK, N.Y. 10119  
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4 DATE: August 7, 2008  
 5 DEPOSITION: Terra Sul Corp vs. Boi Na Brasa, Inc.  
 6 DEPONENT: Farid Saleh.

7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
PAGE	LINE(S)	CHANGE	REASON															
62	10	"BRASA" should be																
		"BRAZA"	Transcription error															
62	12	"BRASA" should be																
		"BRAZA"	Transcription error															
63	12	"BRASA" should be																
		"BRASK"	Transcription error															

18 SUBSCRIBED AND SWORN TO BEFORE ME  
 19 THIS 4th DAY OF September 2008.  
 20 *Rosa Pereira*  
 21 NOTARY PUBLIC  
 22 ROSA PEREIRA  
 A Notary Public of New Jersey  
 My Commission Expires 10/28/08  
 23 MY COMMISSION EXPIRES: \_\_\_\_\_  
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ORIGINAL

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BOI NA BRAZA, INC.,

Applicant,

vs.

TERRA SUL CORPORATION A/K/A  
Churrascaria Boi Na Brasa,

Excepted User.

Concurrent Use No. 94002525

Ser. No. 77/779,339

**CERTIFICATE OF SERVICE**

I certify that I served the foregoing document and all exhibits on Excepted User through its attorney of record, Eamon J. Wall, via First Class Mail on August 2<sup>nd</sup>, 2012, at the following address:

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/s/ Justin S. Cohen  
Justin Cohen